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TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter B—Loans, Purchases, and Other Operations

[1957 C. C. C. Cottonseed Bulletin 2]

PART 443—OILSEEDS

SUBPART—1957 COTTONSEED PURCHASE PROGRAM

Sec.	
443.1338	General statement.
443.1339	Administration.
443.1340	Availability of purchases.
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443.1347	Set-offs.
443.1348	Grade reporting areas.

AUTHORITY: §§ 443.1338 to 443.1348 issued under sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 301, 401, 63 Stat. 1053, 1054, 15 U. S. C. 714c, 7 U. S. C. 1447, 1421.

§ 443.1338 *General statement.* The purchase program provided for in this subpart is a part of the 1957 Cottonseed Price Support Program formulated by Commodity Credit Corporation (hereinafter referred to as "CCC") and the Commodity Stabilization Service (hereinafter referred to as "CSS"). This subpart states the terms and conditions (a) under which cotton ginner, who purchase 1957-crop cottonseed produced in the United States from producers, may sell such cottonseed to CCC in accordance with this subpart (such ginner will hereinafter be referred to as "participating ginner"), in cases where the refusal by oil millers to pay participating ginner at least the f. o. b. gin price to ginner for their cottonseed, which CCC agrees to pay as provided in § 443.1343 (b), makes purchases by CCC from participating ginner necessary, and (b) under which CCC will purchase 1957-crop cottonseed directly from producers in cases where nonparticipation by ginner under this subpart makes such purchases necessary. The program will be carried out by CSS under the general supervision and direction of the Executive Vice President, CCC. The requirements with respect to

loans to producers are contained in the 1957 C. C. C. Cottonseed Bulletin 1.

§ 443.1339 *Administration.* (a) Operations under the program with respect to the purchase, transportation, handling, and storage of cottonseed prior to delivery of the cottonseed to an oil miller or to a storage facility approved by the New Orleans CSS Commodity Office (such storage facility will hereinafter be referred to as "approved storage facility") will be administered through Agricultural Stabilization and Conservation (hereinafter referred to as "ASC") State and county committees (hereinafter referred to as "State" and "county committees"). All contracts in connection with such operations may be executed on behalf of CCC only by authorized CCC contracting officers.

(b) Contracts for the storage and handling of cottonseed subsequent to delivery of the cottonseed to an oil miller or an approved storage facility, for the sale, crushing and processing of cottonseed, and for the transportation, storage, handling and sale of the products derived therefrom, will be executed by CCC contracting officers in the New Orleans CSS Commodity Office, Wirth Building, 120 Marais Street, New Orleans 16, Louisiana (hereinafter referred to as "the New Orleans office").

(c) County Office Managers, State and county committees, and the New Orleans office do not have authority to modify or waive any of the provisions of this subpart or any amendments thereto.

§ 443.1340 *Availability of purchases—* (a) *Area.* The purchase program will be available in all cotton-producing areas of the United States.

(b) *Time.* Purchases will be made from the date of the issuance of this subpart through February 28, 1958.

(c) *Source.* (1) Purchases of cottonseed eligible for purchase by CCC will be made by participating ginner from producers. Purchases will also be made directly from producers by CCC through county committees in areas where ginner do not participate in the program and the appropriate State committee determines that such direct purchases are necessary in order to make the program effective. Payments to producers for cottonseed purchased by CCC and for any authorized transportation performed

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CFR SUPPLEMENTS

(As of January 1, 1957)

The following Supplement is now available:

Title 8 (\$0.55)

Previously announced: Title 3, 1956 Supp. (\$0.40); Titles 4 and 5 (\$1.00); Title 7, Parts 1-209 (\$1.75), Parts 900-959 (\$0.50), Part 960 to end (\$1.25); Title 9 (\$0.70); Titles 10-13 (\$1.00); Title 17 (\$0.60); Title 18 (\$0.50); Title 20 (\$1.00); Title 21 (\$0.50); Titles 22 and 23 (\$1.00); Title 24 (\$1.00); Title 26, Parts 1-79 (\$0.35), Parts 80-169 (\$0.50), Parts 170-182 (\$0.35), Parts 183-299 (\$0.30), Part 300 to end, Ch. 1, and Title 27 (\$1.00); Title 32, Parts 700-799 (\$0.50), Part 1100 to end (\$0.50); Title 39 (\$0.50); Title 49, Parts 1-70 (\$0.65), Parts 91-164 (\$0.60), Part 165 to end (\$0.70)

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by the producers in accordance with § 443.1343, will be made by ASC county offices by means of sight drafts drawn on CCC.

(2) Purchases of eligible cottonseed will be made by oil millers from participating ginner and others. Purchases will also be made from participating ginner by CCC through ASC county offices in areas where oil millers refuse to pay such ginner at least the f. o. b. price to ginner for their cottonseed which CCC agrees to pay as provided in § 443.1343 (b), and the appropriate State committee determines that such purchases are necessary to make the program effective. Payments to participating ginner for cottonseed purchased by CCC will be made by ASC county offices by means of sight drafts drawn on CCC.

(3) Lists of participating ginner will be maintained in the State and county offices.

§ 443.1341 *Eligible producer.* (a) An eligible producer shall be any individual, partnership, corporation, association, trust, estate, or other legal entity, or a State or political subdivision thereof or an agency of such State or political subdivision, producing cottonseed in 1957 in the capacity of landowner, landlord, tenant, or sharecropper.

(b) A cooperative association that handles cottonseed for its producer-members will be considered an eligible producer when selling eligible cottonseed delivered to the association and produced by eligible producers who are members of the association.

§ 443.1342 *Eligible cottonseed.* Eligible cottonseed shall be cottonseed which meet the following requirements:

(a) Such cottonseed must have been produced in the United States in 1957 by an eligible producer.

(b) Such cottonseed must have been produced by the person tendering them for purchase, or by the person who delivered the cottonseed to the cooperative association or ginner tendering the cottonseed for purchase, and the beneficial interest in the cottonseed must be in such person at the time he makes such tender or delivery and must always have been in him or in him and a former producer whom he succeeded before the cottonseed were harvested. Cottonseed tendered by a cooperative association for purchase must have been produced and delivered to the association by its producer-members. Any person tendering cottonseed for purchase must have the legal right to sell the cottonseed.

§ 443.1343 *Purchase price.*—(a) *Price to producers.* (1) Any direct purchases by CCC from producers will be made at gin or other designated point of delivery at the rate of \$42.00 per gross ton for

basis grade (100) cottonseed, with premiums and discounts for other grades equal to the same percentage of such price as the percentage by which the grade of cottonseed purchased exceeds or is less than basis grade (100). The price per ton thus computed may be rounded to the nearest multiple of 10 cents. The grade of eligible cottonseed purchased by CCC directly from producers shall be considered to be the average grade of cottonseed for the area in which the purchase is made (see § 443.1348) as determined on the basis of the latest cottonseed grade report for the area published by CSS or as determined by such other method as the Executive Vice President, CCC, may approve. In areas where both upland and American-Egyptian cotton are grown, the CSS grade report for any such area shall specify the average grade for each such type of cottonseed, and the price to be paid producers in the area shall be determined on the basis of the average grade for the area for the type of cottonseed purchased. The average grade for Sea Island and Sealand cottonseed shall be considered to be that reported for cottonseed in the area in which such cottonseed are produced. Notwithstanding the requirements in this subparagraph, if, at any time while direct purchases are being made by CCC, the State ASC Administrative Officer determines that the average grade for an area, as determined on the basis of the latest cottonseed grade report for the area published by CSS, is higher than the grade of cottonseed being produced in any county in such area, where direct purchases are being made, the State ASC Administrative Officer may reduce the price paid to producers in such county below the price established on the basis of the average grade for the area: *Provided*, That no producer shall be paid, during the period such reduced prices are effective, less than \$42.00 per gross ton basis grade (100) cottonseed with price adjustments computed upon the difference between the average grade of cottonseed produced in the county during such period and basis grade (100). The average grade of cottonseed produced in the county during such period shall be determined on the basis of official chemical analysis covering cottonseed produced in such county or on such other reasonable basis as may be determined by the appropriate State ASC Administrative Officer.

(2) The grade of any cottonseed purchased before the first grade determination for an area is made shall be considered to be 90.

(3) If authorized by the County Office Manager, the producer may deliver the seed at an oil mill, approved storage facility, or designated concentration point rather than at the gin or designated point of delivery, and the producer will be paid for the additional transportation at a rate not in excess of the commercial rate for such transportation service.

(b) *Price to ginner.* (1) (i) Any purchases by CCC from participating ginner will be at the rate of \$46.00 per net ton for basis grade (100) cottonseed, f. o. b. conveyance or carrier at the gin,

with premiums and discounts for other grades equal to the same percentage of such price as the percentage by which the grade of cottonseed purchased exceeds or is less than basis grade (100). Cottonseed which are "below grade" or "off quality", as defined in the U. S. Official Standards for Grades of Cottonseed, will be purchased from participating ginner by CCC at the market value of such cottonseed as determined by CCC. The grades of cottonseed purchased by CCC from such ginner shall be determined in accordance with the United States Official Standards for Grades of Cottonseed, by chemical analysis of samples drawn from the cottonseed by federally licensed cottonseed samplers or such other persons as are approved by CCC, and forwarded to and analyzed by federally licensed cottonseed chemists. A ginner tendering cottonseed for purchase by CCC must not have paid any producer for cottonseed purchased by the ginner on or after the date of filing notice of his intention to participate in the program, less than \$42.00 per gross ton basis grade (100), plus or minus a percentage of such price equal to the percentage by which the average grade of cottonseed for the area in which the gin is located (see § 443.1348) exceeded or was less than basis grade (100). Such average grade shall be determined on the basis of the latest CSS grade report for the area at the time of purchase from such producer or by such other method as the Executive Vice President, CCC, may approve. In areas where both upland and American-Egyptian cotton are grown, the CSS grade report for any such area shall report the average grade for each such type of cottonseed and the price to be paid producers in the area shall be determined on the basis of the average grade for the area for the type of cottonseed purchased. The average grade for Sea Island and Sealand cottonseed shall be considered to be that reported for cottonseed in the area in which such cottonseed are produced. If it is determined by the County Office Manager and the State ASC Administrative Officer that any participating ginner paid any producer less than the prices he should have paid under the foregoing provisions of this section, such ginner shall not, without prejudice to any other rights which CCC may have, be eligible to make any further sales to CCC under the 1957 Cottonseed Price Support Program.

(ii) Notwithstanding the preceding requirements as to price, a participating ginner, after first notifying the County Office Manager for the county where the gin is located of his intention to do so, may reduce the price paid to producers below the price established on the basis of the average grade for the area: *Provided*, That the ginner shall not pay any producer, during the period he is paying such reduced price, less than \$42.00 per gross ton basis grade (100) with price adjustments computed upon the difference between the average grade of cottonseed produced at the gin during such period and basis grade (100). The average grade of cottonseed produced at the

gin during such period shall be determined on the basis of official chemical analysis or oil mill grade reports covering such cottonseed or on such other reasonable basis as may be approved by the County Office Manager. The ginner shall furnish the county office with certified copies of such chemical analyses, grade reports, or other evidence satisfactory to the County Office Manager, showing the average grade of cottonseed produced at the gin during such period. If it is determined by the State ASC Administrative Officer and County Office Manager that any participating ginner paid producers less than the prices he should have paid in accordance with the preceding three sentences, such ginner shall, without prejudice to any other rights with CCC may have, be ineligible to make any further sales to CCC under the 1957 Cottonseed Price Support Program unless he first pays all of such producers the difference between the price paid to the producers and the price they should have received.

(iii) A ginner may round per ton prices for cottonseed purchased from producers to the nearest multiple of 10 cents.

(2) The grade of cottonseed purchased from a producer before the first grade determination for an area is made shall be considered to be 90.

(3) If the ginner, upon authorization by the County Office Manager, transports cottonseed from the gin to oil miller, or approved storage facility, or designated concentration point, the ginner will be paid for such transportation at a rate not in excess of the commercial rate for such transportation service.

§ 443.1344 Approved forms. The approved forms, together with the provisions of this subpart and any supplements and amendments thereto, shall govern the rights and responsibilities of producers and participating ginner. Approved forms may be obtained from ASC county offices. Any fraudulent representation made by a producer or ginner in executing an approved form may render him subject to criminal prosecution under Federal law and liable for any damages resulting from the purchase of the cottonseed involved. Documents executed by an administrator, executor or trustee will be acceptable only where valid in law and must be accompanied by documentary evidence of the authority of the person executing such documents. The approved forms consist of the following:

(a) **Producers.** Producer's Voucher (CCC Cottonseed Purchase Form 5) shall be executed by the producer when the cottonseed are purchased from the producer by CCC.

(b) **Cotton ginner.** (1) Each cotton ginner desiring to sell cottonseed to CCC pursuant to this subpart shall, prior to tender of any cottonseed for sale, file with the county office for the county in which each gin is located a Ginner's Notice of Intention to Participate (CCC Cottonseed Purchase Form 1). The filing of such notice does not obligate the ginner to sell any cottonseed to CCC, but all applicable provisions of this subpart must be complied with by the ginner if any

cottonseed are offered by the ginner for sale to CCC under the 1957 Cottonseed Price Support Program. Only cottonseed purchased by a participating ginner from a producer after the filing of the Ginner's Notice of Intention to Participate shall be eligible for purchase by CCC under this subpart.

(2) After the Ginner's Notice of Intention to Participate has been filed, a Ginner's Certificate (CCC Cottonseed Purchase Form 2) shall be completed and executed by the participating ginner to cover all cottonseed purchased by him from producers and the form shall be submitted by the ginner to the appropriate county office at such times and covering such periods of time as the State ASC Administrative Officer determines are necessary to make the program effective.

(3) If cottonseed are sold to CCC, the ginner shall prepare and execute a Ginner's Voucher and Certificate (CCC Cottonseed Purchase Form 4) covering the cottonseed and deliver the form to the county office. Each Ginner's Voucher and Certificate submitted by a ginner to the county office shall be supported by weight certificates or warehouse receipts covering the cottonseed purchased which have been issued by an oil miller or an approved storage facility or a representative of the county committee at a designated concentration point, and in the absence of warehouse receipts guaranteeing grade, by official chemical analyses certificates covering the cottonseed and identifying such cottonseed by lot numbers and/or receipt numbers and weights.

§ 443.1345 Determination of quantity. The quantity of cottonseed purchased from the producer by CCC shall be the gross weight actually delivered to CCC as determined by a representative of the county committee, or by an approved storage facility, or by an oil miller. The quantity of cottonseed purchased from a producer by a participating ginner shall be the gross weight of the cottonseed as customarily determined by the ginner in his purchases of cottonseed from producers. The quantity of cottonseed purchased from a ginner by CCC shall be the net weight of the cottonseed at first destination after deduction of the weight of any foreign matter in excess of 1 percent.

§ 443.1346 Liens. If liens or encumbrances exist on the cottonseed, proper waivers must be obtained.

§ 443.1347 Set-offs. (a) If the cottonseed are purchased from a producer by CCC under this subpart and the producer is indebted to CCC on any accrued obligation, or if any installment or installments on any loan made available by CCC on farm-storage facilities or mobile drying equipment are past due, or are payable or repayable, under the provisions of the note evidencing such loan, out of the proceeds of the purchase, he must designate CCC or the lending agency holding such note as the payee of the proceeds of the purchase to the extent of such indebtedness or installments, but not to exceed that portion of the proceeds remaining after deduction of

service charges and amounts due prior lien-holders.

(b) If the producer is indebted to any other agency of the United States, and such indebtedness is listed on the county debt register, he must designate such agency as the payee of the proceeds to the extent of such indebtedness, but not to exceed that portion of the proceeds remaining after deduction of amounts under paragraph (a) of this section.

(c) Compliance with the provisions of this section shall not constitute a waiver of any right of the producer to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

§ 443.1348 Grade reporting areas. Areas for grade reporting purposes will be established by the Director, Cotton Division, CSS, and a list of area delineations may be obtained from the applicable ASC State office or the Director of the Cotton Division, CSS, USDA, Washington 25, D. C.

Issued this 10th day of April 1957.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 57-3030; Filed, Apr. 15, 1957;
8:50 a. m.]

PART 468—MOHAIR

SUBPART—1957 PAYMENT PROGRAM FOR MOHAIR

§ 468.61 Payment program for mohair.—(a) **Level of price support.** The Commodity Stabilization Service and Commodity Credit Corporation hereby announce the 1957 payment program for mohair. The program will be carried out under the general supervision and direction of the Executive Vice President of Commodity Credit Corporation through the Commodity Stabilization Service. Prices of mohair will be supported at a level which will yield an average return to growers of 70 cents a pound for all mohair sold in the 1957 marketing year (April 1, 1957, through March 31, 1958). The price of mohair will be supported by payments to producers if the national average return to producers for all mohair sold in the marketing year is less than the support level of 70 cents a pound. Mohair prices are now above that level.

(b) **Provisions of regulations.** If market conditions become such that it appears that payments to producers will be necessary, regulations containing the detailed program requirements will be issued. Such regulations will be generally similar to the regulations dealing with shorn wool payments which are included in the 1957 Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), issued by the Acting Executive Vice President, Commodity Credit Corporation, on January 25, 1957 (22 F. R. 593), except that there will be no deductions from payments under the mohair program based on any purchases of goats. Applicants for payments under a mohair program will submit sales docu-

ments meeting the requirements as to sales documents for shorn wool (§§ 472.807 (b), (c), and (d) and 472.808), and producers of mohair are cautioned to obtain and keep such documents for use under a mohair program if one is instituted.

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interprets or applies sec. 5, 62 Stat. 1072, secs. 702-709, 68 Stat. 910-912; 15 U. S. C. 714c, 7 U. S. C. 1781-1787, 1446)

Issued this 10th day of April 1957.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 57-3029; Filed, Apr. 15, 1957;
8:49 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

SUBPART—UNITED STATES STANDARDS FOR GRADES OF CANNED APRICOTS¹

On May 26, 1956, a notice of proposed rule making was published in the FEDERAL REGISTER (21 F. R. 3624) regarding a proposed revision of the United States Standards for Grades of Canned Apricots.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following United States Standards for Grades of Canned Apricots are hereby promulgated pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.):

PRODUCT DESCRIPTION, STYLES, AND GRADES

- Sec.
52.2641 Product description.
52.2642 Styles of canned apricots.
52.2643 Grades of canned apricots.
52.2644 Grades of canned "solid-pack" apricots.

LIQUID MEDIA, FILL OF CONTAINER, AND DRAINED WEIGHTS

- 52.2645 Liquid media and Brix measurements for canned apricots.
52.2646 Fill of container for canned apricots.
52.2647 Recommended fill of container for canned "dietetic" and "solid-pack" apricots.
52.2648 Recommended minimum drained weights for canned apricots.
52.2649 Compliance with recommended drained weights.

FACTORS OF QUALITY

- 52.2650 Ascertaining the grade.
52.2651 Ascertaining the rating for the factors which are scored.
52.2652 Color.
52.2653 Uniformity of size and symmetry.
52.2654 Absence of defects.
52.2655 Character.

¹ Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

LOT CERTIFICATION TOLERANCES

- Sec.
52.2656 Tolerances for certification of officially drawn samples.

SCORE SHEET

- 52.2657 Score sheet for canned apricots.

AUTHORITY: §§ 52.2641 to 52.2657 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

PRODUCT DESCRIPTION, STYLES, AND GRADES

§ 52.2641 *Product description*—(a) *Canned apricots*. "Canned apricots" means "canned apricots" as such product is defined in the standard of identity for canned apricots (21 CFR 27.10) issued pursuant to the Federal Food, Drug, and Cosmetic Act. For the purposes of the standards in this subpart, and unless the text indicates otherwise, the terms "canned apricots" include "canned apricots" and "canned spiced apricots" as defined in the aforesaid standard of identity, canned "solid-pack" apricots, and canned "dietetic" apricots.

(b) *Canned "solid-pack" apricots*. For the purposes of the standards in this subpart, canned apricots when referred to as "canned 'solid-pack' apricots" or "solid-pack apricots" means prepared apricots packed without a liquid packing medium, with or without a dry nutritive sweetening ingredient added, and sufficiently processed by heat to assure preservation of the product in hermetically sealed containers. "Solid-pack" apricots to which a sweetening ingredient has not been added are considered "unsweetened"; "Solid-pack" apricots to which a dry nutritive sweetening ingredient has been added are considered "sweetened."

(c) *Canned "dietetic" apricots*. For the purposes of the standards in this subpart, canned apricots when referred to as "canned 'dietetic' apricots" or "dietetic apricots" means canned apricots without nutritive sweetening ingredient(s) added and declared for dietary use, or with artificial sweetening ingredient(s) added, or with any other ingredient(s) permissible for dietary use under the provisions of the Federal Food, Drug, and Cosmetic Act.

§ 52.2642 *Styles of canned apricots*. (a) "Unpeeled halves" or "Unpeeled halved" canned apricots are unpeeled and pitted apricots cut approximately in half along the suture from stem to apex.

(b) "Peeled halves" or "Peeled halved" canned apricots are peeled and pitted apricots cut approximately in half along the suture from stem to apex.

(c) "Unpeeled slices" or "Unpeeled sliced" canned apricots are unpeeled and pitted apricots cut into thin sectors or strips.

(d) "Peeled slices" or "Peeled sliced" canned apricots are peeled and pitted apricots cut into thin sectors or strips.

(e) "Unpeeled whole" canned apricots are unpeeled, unpitted, whole apricots with stems removed.

(f) "Peeled whole" canned apricots are peeled, unpitted, whole apricots with stems removed.

(g) "Unpeeled mixed pieces of irregular sizes and shapes" are cut units of canned unpeeled apricots that are pre-

dominantly irregular in size and shape which do not conform to a single style of unpeeled halves, unpeeled slices, or unpeeled whole canned apricots or which are a mixture of two or more of such styles.

(h) "Peeled mixed pieces of irregular sizes and shapes" are cut units of canned peeled apricots that are predominantly irregular in size and shape which do not conform to a single style of peeled halves, peeled slices, or peeled whole canned apricots or which are a mixture of two or more of such styles.

(i) "Pitted" canned solid pack apricots are prepared from whole apricots without cutting into halves and may be crushed or broken in removing the pits.

§ 52.2643 *Grades of canned apricots*.

(a) "U. S. Grade A" or "U. S. Fancy" is the quality of unpeeled or peeled halves, unpeeled or peeled slices, or unpeeled or peeled whole canned apricots that possess similar varietal characteristics; that possess a normal flavor and odor, that possess a good color, that are practically uniform in size and symmetry for the applicable style, that are practically free from defects, that possess a good character, and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 90 points: *Provided*, That unpeeled or peeled halves, unpeeled or peeled slices, or unpeeled or peeled whole canned apricots may possess a reasonably good color that scores not less than 17 points, may be reasonably uniform in size and symmetry for the applicable style except for limits for off-suture cuts in unpeeled halves, and may possess a reasonably good character, if the total score is not less than 90 points.

(b) "U. S. Grade B" or "U. S. Choice" is the quality of unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess similar varietal characteristics; that possess a normal flavor and odor, that possess a reasonably good color, that are reasonably uniform in size and symmetry for the applicable style, that are reasonably free from defects, that possess a reasonably good character, and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 80 points: *Provided*, That unpeeled or peeled halves, or unpeeled or peeled whole canned apricots may be fairly uniform in size and symmetry except for limits for off-suture cuts in unpeeled halves, if the total score is not less than 80 points.

(c) "U. S. Grade C" or "U. S. Standard" is the quality of unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess similar varietal characteristics; that possess a normal flavor and odor, that possess a fairly good color, that are fairly uniform in size and symmetry for the applicable style, that are fairly free from defects, that possess a fairly good character, and that for those factors

weight of the sieve and apricots less the weight of the dry sieve. A sieve 8 inches in diameter is used for the equivalent of No. 3 size cans (404 x 414) and smaller, and a sieve 12 inches in diameter is used for containers larger than the equivalent of the No. 3 size can.

§ 52.2649 *Compliance with recommended drained weights.* Compliance with the recommended drained weights for canned apricots, canned "dietetic" apricots, and canned unsweetened "solid-pack" apricots is determined by averaging the drained weights from all the containers which are representative of a specific lot and such lot is considered as meeting the recommendations if, in 30 days or more after the apricots are canned, the following criteria are met:

(a) The average of the drained weights from all of the containers meets the recommended drained weight;

(b) One-half or more of the containers meet the recommended drained weight; and

(c) The drained weights from the containers which do not meet the recommended drained weight are within the range of variability for good commercial practice.

since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of "dietetic" or "solid-pack" apricots be as full of apricots as practicable without impairment of quality and that the product including liquid, if any, occupy not less than 90 percent of the volume of the container.

§ 52.2648 *Recommended minimum drained weights for canned apricots—(a) General.* The minimum drained weight recommendations for the various applicable styles in Table I are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purposes of these grades.

(b) *Method for ascertaining drained weight.* The drained weight of canned apricots, canned "dietetic" apricots, and canned "solid-pack" apricots is determined by emptying the contents of the container, turning the pit cavities down in halves, upon a United States Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937-inch $\pm 3\%$, square openings) so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes. The drained weight is the

TABLE I—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR CANNED APRICOTS

Container designations (metal, unless otherwise stated)	Container size—overall dimensions		Any grade in any sirup or other liquid medium, including "dietetic" apricots—	Unpeeled or peeled halves; unpeeled or peeled slices; mixed pieces of irregular sizes and shapes	Unpeeled whole; peeled whole
	Width	Height			
8 oz. tall	Inches 2 1/4	Inches 3 1/4	Ounces 5.0	Ounces 4.7	
8 oz. glass			5.0	4.7	
No. 303	3 1/4	4 1/4	9.7	9.0	
No. 308	3 1/4	4 1/4	9.7	9.0	
No. 308 glass			9.7	9.0	
No. 2 1/2	3 1/4	4 1/4	12.0	11.5	
No. 2 1/2 glass			17.5	16.0	
No. 10	4 1/4	4 1/4	16.5	15.5	
No. 10 glass			64.0	61.0	
No. 10	6 3/4	7			
No. 2 1/2	4 1/4	4 1/4			
No. 10	6 3/4	7			
				Ounces 70.0	
					Ounces 25.0
					92.0

"Solid-Pack," all applicable styles (unsweetened only)

"Heavy-Pack," any style, in any liquid medium except "dietetic packs"

Solid-Pack" or "U. S. Standard Solid-Pack" is the quality of unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, unpeeled or peeled mixed pieces of irregular sizes and shapes, or pitted canned "solid-pack" apricots that possess a normal flavor and odor; that possess a fairly good color for canned "solid-pack" apricots, that are fairly free from defects for canned "solid-pack" apricots, that possess a fairly good character for canned "solid-pack" apricots, and that for those factors which are scored in accordance with the scoring system outlined in this subpart score not less than 70 points.

(b) "Substandard Solid-Pack" is the quality of unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, unpeeled or peeled mixed pieces of irregular sizes and shapes, or pitted canned "solid-pack" apricots that fail to meet the requirements of "U. S. Grade C Solid-Pack".

LIQUID MEDIA, FILL OF CONTAINER, AND DRAINED WEIGHTS

§ 52.2645 *Liquid media and Brix measurements for canned apricots.* "Cut-out" requirements for liquid media in canned apricots are not incorporated in the grades of the finished product since sirup or any other liquid medium, as such, is not a factor of quality for the purposes of these grades. The "cut-out" Brix measurement, as applicable, for the respective designations is as follows:

Designations	Brix measurement
"Extra heavy sirup" or "Extra heavy apricot juice sirup"	25° or more but not more than 40°
"Heavy sirup" or "Heavy apricot juice sirup"	21° or more but less than 25°
"Light sirup" or "Light apricot juice sirup"	16° or more but less than 21°
"Slightly sweetened water" or "Slightly sweetened apricot juice"	Less than 16°
"In water"	Packed in water.
"In apricot juice"	Packed in apricot juice.

§ 52.2646 *Fill of container for canned apricots.* The standard of fill of container for canned apricots is the maximum quantity of the apricot units which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient. Canned apricots that do not meet this

which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(d) "U. S. Grade D" is the quality of unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that may possess dissimilar varietal characteristics; that possess a normal flavor and odor, that possess a fairly good color, that may vary in size and symmetry for the applicable style, that are fairly free from defects except for crushed and broken units in the styles of halves or whole style, that possess a noticeable variability in character, and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 60 points. Canned apricots of this grade may or may not meet the minimum standard or quality for canned apricots issued pursuant to the Federal Food, Drug, and Cosmetic Act.

(e) "Substandard" is the quality of canned apricots that fail to meet the applicable requirements of U. S. Grade C or U. S. Standard or of U. S. Grade D and is the quality of canned apricots that may or may not meet the minimum standard of quality for canned apricots issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 52.2644 *Grades of canned "solid-pack" apricots.* (a) "U. S. Grade C

requirement are "Below Standard in Fill."

§ 52.2647 *Recommended fill of container for canned "dietetic" and "solid-pack" apricots.* The recommended fill of container for canned "dietetic" and "solid-pack" apricots is not incorporated in the grades of the finished product

FACTORS OF QUALITY

§ 52.2650 *Ascertaining the grade—*
(a) *General.* In addition to considering other requirements outlined in the standards the following quality factors are evaluated:

(1) *Factors not rated by score points in canned apricots other than "solid-pack" apricots.* (i) Varietal characteristics.

(ii) Flavor and odor.

(2) *Factors not rated by score points in "solid-pack" apricots.* (i) Flavor and odor.

(3) *Factors rated by score points in canned apricots.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

	Points
(i) Color	20
(ii) Uniformity of size and symmetry	20
(iii) Absence of defects	30
(iv) Character	30
Total score	100

(b) *Definition of flavor and odor.* "Normal flavor and odor" means that the canned apricots are free from objectionable flavors and objectionable odors of any kind.

§ 52.2651 *Ascertaining the rating for the factors which are scored.* The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "18 to 20 points" means 18, 19, or 20 points).

§ 52.2652 *Color—*(a) *General.* (1) The color of canned apricots other than canned "spiced" apricots refers to the characteristic color of the outer, uncut surfaces of the units; and the varying degrees of "pale yellow areas", "light greenish-yellow areas", and "light green areas", refer to the outer, uncut surfaces of either peeled or unpeeled units. Canned whole apricots shall be considered as halved along the suture in evaluating the factor of color in accordance with the requirements of this section.

(2) The factor of color for canned "spiced" apricots is not based on any detailed requirement and is not scored but the color shall be normal for canned "spiced" apricots; the other three factors (uniformity of size and symmetry, absence of defects, and character as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) (A) *classification.* Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess a good color may be given a score of 18 to 20 points. Unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that score 18 to 20 points shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a partial limiting rule). "Good color"

means that the canned apricots possess a typical color characteristic of well-matured apricots which color is practically uniform; that the canned apricots are free from brown color due to oxidation, improper processing, or other causes; and that, in addition, has the following meanings for the respective styles:

(1) *Unpeeled or peeled halves; unpeeled or peeled whole.* All of the units may possess pale yellow areas not exceeding one-fourth on a unit; not more than a total of 5 percent, by count, of the units or 1 unit may possess a reasonably good color including pale yellow areas exceeding one-fourth but not exceeding one-half on a unit, or may possess light greenish-yellow areas not exceeding one-fourth on a unit; but none of the units may possess a fairly good color including pale yellow areas exceeding one-half on a unit, or light greenish-yellow areas exceeding one-fourth on a unit, or light green areas on a unit.

(2) *Unpeeled or peeled slices; unpeeled or peeled mixed pieces of irregular sizes and shapes.* Not more than 5 percent, by weight, of the drained fruit may possess a reasonably good color or may consist of units that possess predominating pale yellow or light greenish-yellow areas and none of the units may possess a fairly good color including predominating light green areas.

(c) (B) *classification.* Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess a reasonably good color may be given a score of 16 or 17 points. Unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that fall into this classification or other styles that score 16 points shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good color" means that the canned apricots possess a typical color characteristic of reasonably well-matured apricots which color is reasonably uniform; that the canned apricots are free from brown color due to oxidation, improper processing, or other causes; and that, in addition, has the following meanings for the respective styles:

(1) *Unpeeled or peeled halves; unpeeled or peeled whole.* All of the units may possess pale yellow areas not exceeding one-half on a unit or may possess light greenish-yellow areas not exceeding one-fourth on a unit; not more than a total of 10 percent, by count, of the units or 1 unit may possess a fairly good color including pale yellow areas exceeding one-half on a unit, or light greenish-yellow areas exceeding one-fourth but not more than one-half on a unit, or light green areas not exceeding one-fourth on a unit; and none may possess light greenish-yellow areas exceeding one-half on a unit, or light green areas exceeding one-fourth on a unit.

(2) *Unpeeled or peeled slices; unpeeled or peeled mixed pieces of irregular sizes and shapes.* Not more than 10 percent, by weight, of the drained fruit may possess a fairly good color or may consist

of units that possess predominating pale yellow or light greenish-yellow areas or light green areas: *Provided*, That such light green areas do not affect materially the appearance of the product.

(d) (C), (D) *classification.* Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess a fairly good color may be given a score of 14 or 15 points. Canned apricots that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the canned apricots possess a typical color characteristic of fairly well-matured apricots which color is fairly uniform; that the canned apricots may possess not more than a slight brown color due to oxidation, improper processing, or other causes; and that, in addition, has the following meanings for the respective styles:

(1) *Unpeeled or peeled halves; unpeeled or peeled whole.* All of the units may possess pale yellow areas, may possess light greenish-yellow areas not exceeding one-half on a unit, or may possess light green areas not exceeding one-fourth on a unit; and not more than a total of 10 percent, by count, of the units or 1 unit may possess light greenish-yellow areas exceeding one-half on a unit or may possess light green areas exceeding one-fourth on a unit.

(2) *Unpeeled or peeled slices; unpeeled or peeled mixed pieces of irregular sizes and shapes.* Not more than 10 percent, by weight, of the drained fruit may consist of units that possess predominating light greenish-yellow areas or light green areas or shades of color not typical of fairly well-matured apricots: *Provided*, That such color does not affect seriously the appearance of the product.

(e) (C-SP) *classifications.* Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, unpeeled or peeled mixed pieces of irregular sizes and shapes, or pitted canned "solid-pack" apricots that possess a fairly good color for canned "solid-pack" apricots may be given a score of 14 or 15 points. Canned "solid-pack" apricots that fall into this classification shall not be graded above U. S. Grade C Solid-Pack or U. S. Standard Solid-Pack, regardless of the total score for the product (this is a limiting rule). "Fairly good color for canned 'solid-pack' apricots" means that the canned apricots possess a color characteristic of fairly well-matured apricots; that the canned apricots may possess not more than a slight brown color due to oxidation, improper processing, or other causes; and that not more than 15 percent, by weight, of the drained fruit may consist of units that possess light greenish-yellow areas or light green areas or shades of color not typical of fairly well-matured apricots: *Provided*, That such does not affect seriously the appearance of the product.

(f) (SStd) and (SSStd-SP) *classification.* Canned apricots and canned "solid-pack" apricots that fail to meet the requirements of paragraph (d) or (e)

of this section may be given a score of 0 to 13 points and shall not be graded above Substandard or Substandard Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule).

§ 52.2653 *Uniformity of size and symmetry*—(a) *General*. The factor of uniformity of size and symmetry for unpeeled or peeled slices and unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots and all applicable styles of canned "solid-pack" apricots is not based on any detailed requirements and is not scored; the other three factors (color, absence of defects, and character as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) *Off-suture cut*. "Off-suture cut" in unpeeled halved canned apricots means a halved unit which has been cut at a distance from the suture greater than $\frac{1}{4}$ inch at the widest measurement from the suture.

(c) (A) *classification*. Unpeeled or peeled halves or unpeeled or peeled whole canned apricots that are practically uniform in size and symmetry may be given a score of 18 to 20 points. "Practically uniform in size and symmetry" in halved and whole canned apricots means that the units are very symmetrical; that the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 50 percent; that the weight of each half is not less than $\frac{2}{3}$ ounce; and that not more than 5 percent, by count, of the units in the style of unpeeled halves may possess off-suture cuts.

(d) (B) *classification*. Unpeeled or peeled halves or unpeeled or peeled whole canned apricots that are reasonably uniform in size and symmetry may be given a score of 16 or 17 points. Unpeeled halved canned apricots that possess more than 10 percent, by count, of the units that are off-suture cuts shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a partial limiting rule). "Reasonably uniform in size and symmetry" in halved and whole canned apricots means that the units are reasonably symmetrical; that the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 75 percent; that the weight of each half is not less than $\frac{2}{3}$ ounce; and that not more than 15 percent, by count, of the units in the style of unpeeled halves may possess off-suture cuts.

(e) (C) *classification*. Unpeeled or peeled halves or unpeeled or peeled whole canned apricots that are fairly uniform in size and symmetry may be given a score of 14 or 15 points. Except for off-suture cuts in unpeeled halves, canned apricots that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product; and unpeeled halves of canned apricots that possess more than 15 percent, by count, of the units that are off-suture cuts shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a partial limiting

rule). "Fairly uniform in size and symmetry" in halved and whole canned apricots means that the units may vary in size, thickness, and symmetry; that the weight of the largest full-size unit may be not more than twice the weight of the smallest full-size unit; that the weight of each half is not less than $\frac{2}{3}$ ounce; and that not more than 30 percent, by count, of the units in the style of unpeeled halves may possess off-suture cuts.

(f) (D) and (SSd) *classification*. Canned apricots of the applicable styles which fail to meet paragraph (e) of this section may be given a score of 0 to 13 points and shall not be graded above the following stated grade, regardless of the total score for the product (this is a limiting rule).

(1) Halves or whole canned apricots in which the weight of the largest full-size unit is more than twice the weight of the smallest full-size unit shall not be graded above U. S. Grade D and are also "Below Standard in Quality—Mixed Sizes."

(2) Halves of canned apricots in which the weight of any half is less than $\frac{2}{3}$ ounce shall not be graded above U. S. Grade D and are also "Below Standard in Quality—Small Halves."

(3) Unpeeled halves of canned apricots in which more than 30 percent, by count, of the units are off-suture cuts shall not be graded above U. S. Grade D.

§ 52.2654 *Absence of defects*—(a) *General*. The factor of absence of defects as applicable for the respective styles refers to the degree of freedom from pit material, from loose pits, from harmless extraneous material, from short stems, from peel, from minor blemishes and blemishes, from crushed or broken units, and from any other defects which affect the appearance or edibility of the product.

(b) *Definitions and explanations of defects*—(1) *Harmless extraneous material*. "Harmless extraneous material" means any vegetable substance (such as, but not limited to, a leaf or portion thereof or a large stem) that is harmless.

(2) *Short stem*. A "short stem" means the short, thick, woody stem which attaches the apricot to the twig of the tree or other stem material of equivalent woodiness and shortness.

(3) *Pit material*. "Pit material" means any whole pit in all styles other than whole styles or any portion of an apricot pit, regardless of size, except when whole apricot pits or apricot kernels are permitted as seasoning ingredients in other than whole style.

(4) *Loose pit*. A "loose pit" means a whole, unbroken pit not adhering to the flesh of a unit in the styles of whole apricots.

(5) *Minor blemishes*. "Minor blemishes" in unpeeled styles include "freckles" and also mean:

(i) Light brown to brown surface areas which, singly or in combination on a unit, exceed in the aggregate the area of a circle $\frac{1}{8}$ inch in diameter but do not exceed in the aggregate the area of a circle $\frac{1}{4}$ inch in diameter; or

(ii) Single dark brown surface areas that do not exceed the area of a circle $\frac{1}{8}$ inch in diameter but which, singly or in

combination with other "minor blemishes" on a unit, affect materially but not seriously the appearance of the unit. Light brown to brown surface areas and "freckles" that are insignificant and less than the area of a circle $\frac{1}{8}$ inch in diameter and which do not affect materially the appearance of the unit are not considered "defects."

(6) *Blemishes*. "Blemishes" in canned apricots include units affected by scab, hail injury, discoloration, or other abnormalities in the following degree:

(i) Light brown to brown surface areas in unpeeled styles which, singly or in combination on a unit, exceed in the aggregate the area of a circle $\frac{1}{4}$ inch in diameter.

(ii) Blemishes that extend into the fruit tissue regardless of area or depth;

(iii) Single dark brown surface areas in unpeeled styles that exceed the area of a circle $\frac{1}{8}$ inch in diameter, whether or not the unit is affected by minor blemishes; or

(iv) Any blemish whether or not specifically defined or mentioned in this subparagraph which affects seriously the appearance of the unit but is not a filthy or decomposed substance.

(7) *Crushed or broken*. "Crushed or broken" means that:

(i) A unit in halves or whole style of canned apricots is "crushed" if the unit has definitely lost its normal shape and bears marks of crushing or is otherwise crushed not due to ripeness; and

(ii) A unit in halves or whole style of canned apricots is "broken" if severed into definite parts; halves of canned apricots that are slightly or partially split or mashed from the edge to the pit cavity are not considered broken, or units in the style of peeled whole apricots that are mashed or very soft due to ripeness to the extent that the pit cavity is exposed or a seed missing therefrom is not crushed or broken. Portions equivalent to a full-size unit that has been broken are considered as one unit in determining the percentage by count.

(c) (A) *classification*. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that are practically free from defects may be given a score of 27 to 30 points. Unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that score 27 to 30 points shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a partial limiting rule). "Practically free from defects" means that the canned apricots are practically free from pit material and from any defects not specifically mentioned that affect the appearance or edibility of the product; and the following defects may be present within the limits stated for the respective styles of canned apricots:

(1) *Unpeeled or peeled halves; unpeeled or peeled whole*. (i) No harmless extraneous material;

(ii) Not more than an average of 1 short stem for each 30 ounces of total contents;

(iii) Not more than an average of $\frac{1}{8}$ square inch of peel for each pound of total contents in the peeled styles;

(iv) Not more than 2 loose pits for each 30 ounces of total contents in whole apricots;

(v) Not more than 5 percent, by count, of the units may be crushed or broken or one unit in a container is permitted to be crushed or broken if such unit exceeds the allowance of 5 percent, by count: *Provided*, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units; and

(vi) Not more than a total of 10 percent, by count, of the units may possess minor blemishes and blemishes: *Provided*, That not more than 5 percent, by count, of the units possess blemishes. One unit in a container is permitted to possess minor blemishes or blemishes if such unit exceeds the respective allowances of 10 percent or 5 percent, by count: *Provided*, That in all containers comprising the sample such units possessing minor blemishes and blemishes do not exceed an average of 10 percent of the total number of units including not more than an average of 5 percent of the total number of units that may possess blemishes.

(2) *Unpeeled or peeled slices; unpeeled or peeled mixed pieces of irregular sizes and shapes.* (i) No harmless extraneous material;

(ii) Not more than an average of 1 short stem for each 30 ounces of total contents;

(iii) Not more than an average of $\frac{1}{8}$ square inch of peel for each pound of total contents in the peeled styles; and

(iv) Not more than 5 percent, by weight, of the drained fruit may consist of units that possess minor blemishes and blemishes: *Provided*, That the appearance or edibility of the product is not more than slightly affected.

(d) (B) *classification.* Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that are reasonably free from defects may be given a score of 24 to 26 points. Canned apricots that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that the canned apricots are practically free from pit material; are reasonably free from any defects not specifically mentioned that affect the appearance or edibility of the product; and the following defects may be present within the limits stated for the respective styles of canned apricots:

(1) *Unpeeled or peeled halves; unpeeled or peeled whole.* (i) Not more than 1 piece of harmless extraneous material for each 100 ounces of total contents;

(ii) Not more than an average of 2 short stems for each 30 ounces of total contents;

(iii) Not more than an average of $\frac{1}{8}$ square inch of peel for each pound of total contents in the peeled styles;

(iv) Not more than 3 loose pits for each 30 ounces of total contents in whole apricots;

(v) Not more than 5 percent, by count, of the units may be crushed or broken or one unit in a container is permitted to be crushed or broken if such unit exceeds the allowance of 5 percent, by count: *Provided*, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units; and

(vi) Not more than a total of 20 percent, by count, of the units may possess minor blemishes and blemishes: *Provided*, That not more than 10 percent, by count, of the units possess blemishes. One unit in a container is permitted to possess minor blemishes or blemishes if such unit exceeds the respective allowances of 20 percent or 10 percent, by count: *Provided*, That in all containers comprising the sample such units possessing minor blemishes and blemishes do not exceed an average of 20 percent of the total number of units including not more than an average of 10 percent of the total number of units that may possess blemishes.

(2) *Unpeeled or peeled slices; unpeeled or peeled mixed pieces of irregular sizes and shapes.* (i) Not more than 1 piece of harmless extraneous material for each 100 ounces of total contents;

(ii) Not more than an average of 2 short stems for each 30 ounces of total contents;

(iii) Not more than an average of $\frac{1}{8}$ square inch of peel for each pound of total contents in the peeled styles; and

(iv) Not more than 10 percent, by weight, of the drained fruit may consist of units that possess minor blemishes and blemishes: *Provided*, That the appearance or edibility of the product is not materially affected.

(e) (C) *classification.* Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that are fairly free from defects may be given a score of 21 to 23 points. Canned apricots that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that the canned apricots are practically free from pit material; are fairly free from any defects not specifically mentioned (and including excessive trimming in halved or whole style) that affect the appearance or edibility of the product; and the following defects may be present within the limits stated for the respective styles of canned apricots:

(1) *Unpeeled or peeled halves; unpeeled or peeled whole.* (i) Not more than 1 piece of harmless extraneous material for each 30 ounces of total contents;

(ii) Not more than an average of 3 total contents;

(iii) Not more than an average of $\frac{1}{2}$ short stems for each 30 ounces of

square inch of peel for each pound of total contents in the peeled styles;

(iv) Not more than 4 loose pits for each 30 ounces of total contents in whole apricots;

(v) Not more than 5 percent, by count, of the units may be crushed or broken or one unit in a container is permitted to be crushed or broken if such unit exceeds the allowance of 5 percent, by count: *Provided*, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units; and

(vi) Not more than a total of 40 percent, by count, of the units may possess minor blemishes and blemishes: *Provided*, That not more than 20 percent, by count, of the units possess blemishes.

(2) *Unpeeled or peeled slices; unpeeled or peeled mixed pieces of irregular sizes and shapes.* (i) Not more than 1 piece of harmless extraneous material for each 30 ounces of total contents;

(ii) Not more than an average of 3 short stems for each 30 ounces of total contents;

(iii) Not more than an average of $\frac{1}{2}$ square inch of peel for each pound of total contents in peeled style; and

(iv) Not more than 20 percent, by weight, of the drained fruit may consist of units that possess minor blemishes and blemishes: *Provided*, That the appearance or edibility of the product is not seriously affected.

(f) (D) *classification.* Canned apricots of any style which fail to meet the requirements of paragraph (e) of this section but which meet the requirements of this paragraph may be given a score of 0 to 20 points and shall not be graded above U. S. Grade D, regardless of the total score for the product (this is a limiting rule). Halves or whole canned apricots that are thereby U. S. Grade D may also be "Below Standard in Quality"—"Partly Crushed or Broken" or "Unevenly Trimmed," or both. Canned apricots of U. S. Grade D with respect to "absence of defects" are practically free from pit material; are fairly free from any defects not specifically mentioned that affect materially the appearance or edibility of the product; and the following defects may be present within the limits stated for the respective styles of canned apricots:

(1) Not more than 1 piece of harmless extraneous material for each 30 ounces of total contents;

(2) Not more than an average of 3 short stems for each 30 ounces of total contents;

(3) Not more than an average of $\frac{1}{2}$ square inch of peel for each pound of total contents in the peeled styles;

(4) Not more than 4 loose pits for each 30 ounces of total contents in whole canned apricots;

(5) Any amount of unevenly trimmed units in halved or whole style;

(6) Any amount of crushed or broken units in halved or whole style; and

(7) In halved or whole style, not more than a total of 40 percent, by count, of the units may possess minor blemishes and blemishes: *Provided*, That not more than 20 percent, by count, of the units possess blemishes; or

(8) In the styles of unpeeled or peeled sliced and unpeeled or peeled mixed pieces of irregular sizes and shapes, not more than 20 percent, by weight, of the drained fruit may consist of units that possess minor blemishes and blemishes: *Provided*, That the appearance or edibility of the product is not seriously affected.

(g) (SStd) classification. Canned apricots that fail to meet the applicable requirements of paragraph (e) or (f) of this section may be given a score of 0 to 20 points and shall not be graded above the following stated grades, as applicable, regardless of the total score for the product (this is a limiting rule):

(1) Halves or whole canned apricots shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

- (i) Partly crushed or broken;
- (ii) Unevenly trimmed;
- (iii) Blemished.

(2) Unpeeled or peeled slices and unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots shall not be graded above Substandard and may also be "Below Standard in Quality"—"Blemished" if more than 20 percent by count, of the units possess blemishes.

(h) (C-SP) classification. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, unpeeled or peeled mixed pieces of irregular sizes and shapes or pitted canned "solid-pack" apricots that are fairly free from defects for canned "solid-pack" apricots may be given a score of 21 to 23 points. Canned "solid-pack" apricots that fall into this classification shall not be graded above U. S. Grade C Solid-Pack or U. S. Standard Solid-Pack, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects for canned 'solid-pack' apricots" means that the canned "solid-pack" apricots are practically free from pit material; are fairly free from any defects not specifically mentioned that affect the appearance or edibility of the product; and, in addition there may be present:

- (1) Not more than 1 piece of harmless extraneous material for each 30 ounces of total contents;
- (2) Not more than an average of 3 short stems for each 30 ounces of total contents;
- (3) Not more than an average of $\frac{1}{2}$ square inch of peel for each pound of total contents in the peeled styles;
- (4) Not more than 4 loose pits for each 30 ounces of total contents in whole canned apricots; and
- (5) Minor blemishes and blemishes that do not affect seriously the appearance or edibility of the product.

(i) (SStd-SP) classification. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, unpeeled or peeled mixed pieces of irregular sizes and shapes, or pitted canned "solid-pack" apricots that fail to meet the requirements of paragraph (h) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-Pack, regardless of the total score for the product (this is a limiting rule).

§ 52.2655 *Character*—(a) *General*. The factor of character refers to the degree of ripeness, the texture and condition of the flesh, the firmness and tenderness of the canned apricots and their tendency to retain their apparent original conformation and size without material disintegration.

(b) (A) classification. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess a good character may be given a score of 27 to 30 points. Unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that score 27 to 30 points shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a partial limiting rule). "Good character" means that the units possess a practically uniform tender, fleshy texture typical of well-ripened, properly prepared, and properly processed canned apricots; the units are uniformly intact and may be soft but hold their original conformation and size without material disintegration; and not more than 5 percent, by count, of the units may possess a "reasonably good character." One unit in a container is permitted to possess a "reasonably good character" if such unit exceeds 5 percent, by count: *Provided*, That the appearance or eating quality, or both, is not more than slightly affected by the character of such unit.

(c) (B) classification. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess a reasonably good character may be given a score of 24 to 26 points. Mixed pieces of irregular sizes and shapes of canned apricots that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good character" means that the units possess a reasonably uniform, reasonably tender texture typical of properly ripened canned apricots that are properly processed; the texture is reasonably fleshy, and the units are reasonably thick but the tenderness may be variable within the unit or among the units; the units may be soft to slightly firm or slightly ragged but are not mushy; and not more than 10 percent, by count, of the units may possess a fairly good character, except for units that are so firm as to be "not tender." One unit in a container is permitted to have such fairly good character if one unit exceeds the allowance of 10 percent, by count: *Provided*, That in all containers comprising the sample the units with fairly good character do not exceed an average of 10 percent of the total number of units.

(d) (C) classification. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, or unpeeled or peeled mixed pieces of irregular sizes and shapes of canned apricots that possess a fairly good character may be given a score of 21 to 23 points. Canned apricots that fall into this classification shall not be graded above U. S. Grade

C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good character" means that the units possess a texture of properly processed apricots which may be variable in fleshiness but the texture is fairly fleshy and the units are intact; the units may be lacking uniformity of tenderness; the units may be markedly ragged with frayed edges or may be very soft; and not more than 10 percent, by weight, of the drained apricots may be mushy or units that are so firm as to be "not tender".

(e) (D) classification. Canned apricots of any style that meet the requirements of paragraph (d) of this section with respect to units that are so firm as to be "not tender" but which otherwise possess a noticeably variable texture with not more than 25 percent, by weight, of the drained apricots that consist of mushy fruit may be given a score of 0 to 20 points and shall not be graded above U. S. Grade D, regardless of the total score for the product (this is a limiting rule).

(f) (SStd) classification. Canned apricots of any style that fail to meet the applicable requirements of paragraph (d) or (e) of this section or that are so firm as to be "not tender" may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule). Canned apricots that are "not tender" are also "Below Standard in Quality—Not Tender."

(g) (C-SP) classification. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, unpeeled or peeled mixed pieces of irregular sizes and shapes, or pitted canned "solid-pack" apricots that possess a fairly good character for canned "solid-pack" apricots may be given a score of 21 to 23 points. Canned "solid-pack" apricots that fall into this classification shall not be graded above U. S. Grade C Solid-Pack or U. S. Standard Solid-Pack, regardless of the total score for the product (this is a limiting rule). "Fairly good character for canned 'solid-pack' apricots" means the product generally possesses a texture of properly processed apricots which may be variable in tenderness, consisting of very soft to fairly firm units and crushed or broken units.

(h) (SStd-SP) classification. Unpeeled or peeled halves, unpeeled or peeled slices, unpeeled or peeled whole, unpeeled or peeled mixed pieces of irregular sizes and shapes, or pitted canned "solid-pack" apricots which fail to meet the requirements of paragraph (g) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-Pack, regardless of the total score for the product (this is a limiting rule).

LOT CERTIFICATION TOLERANCES

§ 52.2656 *Tolerances for certification of officially drawn samples*. (a) When certifying samples that have been officially drawn and which represent a specific lot of canned apricots the grade for such lot will be determined by averaging the total scores of the containers comprising the sample, if, (1) such containers meet all of the applicable grade

requirements of the factors of quality that are not rated by score points; (2) all containers comprising the sample meet all applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act and in effect at the time of the aforesaid certification; and (3) with respect to those factors which are rated by score points:

(i) Not more than one-sixth of the containers fails to meet the grade indicated by the average of such total scores;

(ii) None of the containers falls more than 4 points below the minimum score

for the grade indicated by the average of such total scores;

(iii) None of the containers falls more than one grade below the grade indicated by the average of such total scores; and

(iv) The average score of all containers for any factor subject to a limiting rule is within the score range of that factor for the grade indicated by the average of the total scores of the containers comprising the sample.

SCORE SHEET

\$ 52.2657 Score sheet for canned apricots.

Size and kind of container.....	
Container mark or identification.....	
Label.....	
Net weight (ounces).....	
Vacuum (inches).....	
Drained weight (ounces): () Heavy pack.....	
Solid pack () ; Spiced () ; Dietetic ().....	
If in a liquid packing medium:	
Brix measurement.....	
Syrup designation (Extra heavy, heavy, etc.).....	
Style.....	
Count (halves, whole).....	

Factors	Score points
Color.....	20 (A) 18-20 (B) 16-17 (C), (D), (C-SP) 14-15 (SStd) & (SStd-SP) 10-13
Uniformity of size and symmetry.....	20 (A) 18-20 (B) 16-17 (C) 14-15 (D) and (SStd) 10-13
Absence of defects.....	30 (A) 27-30 (B) 24-26 (C) and (C-SP) 21-23 (D), (SStd), (SStd-SP) 10-20
Character.....	30 (A) 27-30 (B) 24-26 (C), (C-SP) 21-23 (D), (SStd), (SStd-SP) 10-20
Total score.....	100

Varietal characteristics: () Similar; () Dissimilar
 Normal flavor and odor.....
 Grade.....

1 Limiting rule.
 2 Partial limiting rule.

The United States Standard for Grades of Canned Apricots (which is the fourth issue) contained in this subpart shall become effective 30 days after the date of publication hereof in the FEDERAL REGISTER and thereupon will supersede the United States Standards for Grades of Canned Apricots which have been in effect since June 15, 1945.

Dated: April 10, 1957.

[SEAL] ROY W. LENNARTSON,
 Deputy Administrator,
 Marketing Services.

[F. R. Doc. 57-3003; Filed, Apr. 15, 1957;
 8:45 a. m.]

Chapter III—Agricultural Research Service, Department of Agriculture

[P. P. C. 615, 4th Revision]

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—MEDITERRANEAN FRUIT FLY

ADMINISTRATIVE INSTRUCTIONS DESIGNATING CERTAIN LOCALITIES AS REGULATED AREA

Pursuant to § 301.78-2 of the regulations supplemental to the Mediterranean Fruit Fly Quarantine (7 CFR Supp. 301.78-2, 21 F. R. 3214) under sections 8

and 9 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161, 162), and Administrative Memorandum No. 101.1 of February 21, 1957 issued by the Administrator of the Agricultural Research Service, administrative instructions issued as 7 CFR Supp. 301.78-2a (21 F. R. 3216), effective May 16, 1956, as amended effective June 1, 1956, July 7, 1956, July 13, 1956, December 12, 1956, and January 9, 1957 (21 F. R. 3722, 5032, 5208, and 9787, and 22 F. R. 181), are hereby amended to read as follows:

§ 301.78-2a Administrative instructions designating regulated area under the Mediterranean fruit fly quarantine and regulations. Infestations of the Mediterranean fruit fly have been determined to exist in the civil divisions listed below. Accordingly, such civil divisions are hereby designated as the Mediterranean fruit fly regulated area within the meaning of the provisions in this subpart:

FLORIDA

Dade County. That area bounded on the north by the Dade-Broward County line, on the east by the Atlantic Ocean, on the south by a due east-west line projected from a point where Sunset Drive crosses U. S. Highway No. 1 south of Coral Gables to the east and west boundaries of the County, and on

the west by the Dade-Collier and Dade-Monroe County line.

Lee County. That area included within the corporate limits of the cities of Fort Myers and North Fort Myers.

These amended administrative instructions shall become effective April 16, 1957.

The foregoing amendment relieves restrictions by removing Broward and Pinellas Counties and certain portions of Dade and Lee Counties from the list of civil divisions designated as Mediterranean fruit fly regulated area, it having been determined by the Director of the Plant Pest Control Division that adequate eradication measures have been practiced in said localities for a sufficient length of time to eradicate the Mediterranean fruit fly infestation therein and that regulation of such localities is not otherwise necessary under this subpart. Intensive survey and trapping activities have been carried on in the localities, but no Mediterranean fruit flies have been found there for a period of three months. Therefore, it is considered safe to release them from regulation.

The amendment therefore relieves restrictions deemed unnecessary and must be made effective promptly in order to be of maximum benefit to persons wishing to move regulated products from these localities. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to the foregoing amendment are impracticable and contrary to the public interest, and since the amendment relieves restrictions it may be made effective less than 30 days after publication in the FEDERAL REGISTER.

(Sec. 9, 37 Stat. 318, 7 U. S. C. 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 11th day of April 1957.

[SEAL] E. D. BURGESS,
 Director,
 Plant Pest Control Division.

[F. R. Doc. 57-3027; Filed, Apr. 15, 1957;
 8:49 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Civil Air Regs., Amdt. 60-6]

PART 60—AIR TRAFFIC RULES

PILOT VIGILANCE AND RESTRICTIONS ON FLIGHT TESTING

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 10th day of April 1957.

Part 60 of the Civil Air Regulations, which sets forth the air traffic rules for all aircraft, was amended on February 5, 1957, by Civil Air Regulations Amendment 60-1, by adding certain provisions relating to the flight testing of aircraft and vigilance of pilots to see and avoid other aircraft. Section 60.24 of this amendment prohibits the flight testing of aircraft unless such flight test is conducted (1) over open water or sparsely populated areas having light air traffic

and approved by the Administrator, or (2) within a flight test area approved by the Administrator. These rules were adopted without public participation therein, in the interest of safety, in view of a recent aircraft accident involving aircraft undergoing flight test and were to become effective on February 20, 1957. To assure that the views of interested persons were considered in any revised rule relating to flight test of aircraft and vigilance of pilots to see and avoid other aircraft it was requested, in Amendment 60-1, that public comment on the flight test rules be received by the Board on March 22, 1957.

Although this amendment was implemented in all areas except one, it was necessary to issue Amendment 60-4 because of certain difficulties in establishing flight test areas. In order to afford the Administrator of Civil Aeronautics additional time to effect the necessary coordination required to approve flight test areas, Amendment 60-4 extended from February 20, 1957, until April 15, 1957, the effective date of the requirement that a test area be "approved by the Administrator."

The comments received pursuant to the request in Amendment 60-1 have dealt principally with the definition of flight tests. These have been carefully studied and the Board has concluded that certain changes in these rules and in the definition are required to indicate more clearly that they apply to the flight testing of aircraft the airworthiness of which has not been determined by appropriate civil or military authority.

As a result of the changes being made by this amendment three categories of flight test, including both civil and military aircraft, will have to be performed in the flight test area approved or designated by the Administrator. These are:

(1) Flights of new type (experimental) aircraft. In this category, test flights of new type aircraft including take-offs, landings, and en route operations must be conducted only in an approved or designated flight test area unless the Administrator specifically authorizes otherwise.

(2) Flights of production aircraft until basic airworthiness is established. In this category, test flights of production aircraft must be conducted in an approved or designated flight test area, except during take-offs and landings and en route operations to and from approved flight areas. Since production aircraft are models of a type aircraft previously certificated as to its airworthiness by appropriate civil or military authorities they must be flown in the test flight area only until such time as the pilot determines the basic airworthiness of the aircraft, which term is being defined in this amendment and is intended to exclude aircraft flight operations for the purpose of testing equipment or systems which do not involve a determination of aircraft airworthiness.

(3) Flights involving aircraft following major alteration, as defined in Part 18 of the Civil Air Regulations. The rules applicable to this category are identical to those for production aircraft.

Several comments received on new paragraph (c) of the note following § 60.12 indicated that a prejudgment was evident in the statement that crew preoccupation preventing adequate vigilance " * * * shall be evidence of careless or reckless operation * * *."

Since it was not the Board's purpose to prejudice the question of adequate vigilance, but rather to alert persons subject to § 60.12 to the circumstances under which excessive preoccupation by a pilot with cockpit duties may result in careless or reckless operation, the language of the note is being revised to achieve the purpose originally intended.

Interested persons have been afforded an opportunity to participate in the making of this amendment (22 F. R. 781), and due consideration has been given to all relevant matter presented. Since this amendment is to clarify the rules with respect to the flight testing of aircraft and there is an immediate need for this amendment in the interest of safety, the Board finds that postponement of the effective date for 30 days would be impracticable and contrary to the public interest, and that good cause exists for making this amendment effective immediately.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 60 of the Civil Air Regulations (14 CFR Part 60, as amended) effective April 10, 1957.

1. By amending paragraph (c) of the note under § 60.12 to read as follows:

§ 60.12 Careless or reckless operation. * * *

NOTE: * * *

(c) Lack of vigilance by the pilot to observe and avoid other air traffic. This includes failure of the pilot to clear his position prior to starting any maneuver, either on the ground or in flight; and special flight activities which require such preoccupation by the pilot with cockpit duties as would prevent adequate vigilance outside the cockpit for the purpose of collision avoidance without compensation for such reduced degree of vigilance by the use of a competent observer in the aircraft, a chase aircraft, or other equivalent arrangements.

2. By amending § 60.24 to read as follows:

§ 60.24 Flight test. The following provisions shall apply to the flight testing of aircraft unless otherwise authorized by the Administrator under such conditions as he may prescribe:

(a) No person shall flight test an aircraft unless such flight test is conducted:

(1) Over open water or sparsely populated areas having light air traffic and approved by the Administrator; or

(2) Over an area designated by the Administrator.

(b) This section shall not apply to take-offs and landings and operations necessary for flights to and from approved flight areas of production aircraft and aircraft which have been subject to major alterations as defined in Part 18 of this subchapter.

(c) All flight tests shall be conducted in accordance with such traffic rules as the Administrator may from time to time prescribe.

NOTE: It should be recognized that any flight operation that requires excessive pre-

occupation with cockpit duties may result in careless or reckless operation of aircraft. See Example (c) under § 60.12.

3. By amending § 60.60 by revising the definition of "Flight test" and by adding a new definition "Basic airworthiness" to read as follows:

§ 60.60 Definitions. * * *

Basic airworthiness. "Basic airworthiness" means the structural integrity and controllability of an aircraft as determined by the pilot in normal flight maneuvering such that there is no reasonable probability of failure which would endanger persons or property.

Flight test. "Flight test" means flight for the purpose of investigating or checking the operational capabilities of a new type of aircraft, engine, or propeller, the airworthiness of which has not been determined by appropriate military or civil authority; or flights of production aircraft until the basic airworthiness of the aircraft, engine, or propeller contemplated by the appropriate production specification or type certificate is determined by the pilot; or flights involving aircraft, engines, or propellers following major alteration, as defined in Part 18 of this subchapter, until the basic airworthiness of the aircraft, engine, or propeller has been determined by the pilot.

(Sec. 205, 52 Stat. 984 as amended; 49 U. S. C. 425. Interpret or apply secs. 601, 1005, 52 Stat. 1007, 1023, as amended, sec. 4, 60 Stat. 238; 49 U. S. C. 551, 645, 5 U. S. C. 1003)

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 57-3037; Filed, Apr. 15, 1957;
8:51 a.m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 13—DIGEST OF CEASE AND DESIST ORDERS

C. G. OPTICAL CO. AND BENJAMIN D. RITHOLZ;
ORDER VACATED

A cease and desist order published in the FEDERAL REGISTER for July 12, 1955, has been vacated as follows: C. G. Optical Co. and Benjamin D. Ritholz, Docket 6260, May 22, 1955, 20 F. R. 4942 (§§ 13.170 and 13.2140), vacated March 1, 1956.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46)

Issued: April 10, 1957.

By direction of the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 57-3019; Filed, Apr. 15, 1957;
8:47 a.m.]

[Docket 6526]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

BARCLAY HOME PRODUCTS, INC., ET AL.

Subpart—Invoicing products falsely:
§ 13.1108 Invoicing products falsely:

Wool Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1190 Composition: Wool Products Labeling Act; § 13.1212 Formal regulatory and statutory requirements: Wool Products Labeling Act. Subpart—Misrepresenting oneself and goods—Prices: § 13.1810 Fictitious marking. Subpart—Neglecting, unfairly or deceptively to make material disclosure: § 13.1852 Formal regulatory and statutory requirements: Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2-5, 54 Stat. 1128-1130; 15 U. S. C. 45, 68-68 (c)) [Cease and desist order, Barclay Home Products, Inc., et al., Cohoes, N. Y., Docket 6526, Apr. 2, 1957]

In the Matter of Barclay Home Products, Inc., a Corporation and Alexander Buchman and Louis Buchman, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a manufacturer of wool products in Cohoes, N. Y., with branding and invoicing as "Wool", "All new material consisting of wool batting", and "Wool batting", comforters which contained substantial amounts of fibers other than wool or a large percentage of reprocessed wool; with failing to stamp or label certain wool products as required by the Wool Products Labeling Act; and with enclosing streamers or inserts in the individual containers with said comforters bearing the price of \$24.95, which was fictitious and greatly in excess of the regular price.

Following entry of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on April 2 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondents Barclay Home Products, Inc., a corporation, and its officers and Alexander Buchman and Louis Buchman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of comforters or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, which products contain, purport to contain, or in any way are represented as containing, "wool", "reprocessed wool", or "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or

amount of the constituent fibers contained therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight or such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That Barclay Home Products, Inc., a corporation, and Alexander Buchman and Louis Buchman, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of comforters or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting the constituent fibers of which their products are composed or the percentages of amounts thereof in sales invoices, shipping memoranda or in any other manner.

2. Representing in any manner that certain amounts are the usual and regular retail prices of their products when such amounts are in excess of the prices at which their products are usually and regularly sold at retail, or making any other false statement or representation or engaging in any deceptive practice or plan which would provide retailers of their products with a means of misrepresenting their usual and regular retail price.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: April 2, 1957.

By the Commission.

[SEAL]

ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 57-3018; Filed, Apr. 15, 1957; 8:46 a. m.]

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State

[Departmental Reg. 108.303 Revoked]

PART 51—PASSPORTS

REVOCATION OF DEPARTMENTAL REGULATION INVALIDATING CERTAIN PASSPORTS FOR TRAVEL TO OR IN EGYPT, ISRAEL, JORDAN AND SYRIA

Departmental Regulation 108.303 (dated November 2, 1956; published in the FEDERAL REGISTER issue of November 8, 1956, page 8577) invalidating certain passports for travel to or in Egypt, Israel, Jordan, and Syria is hereby revoked.

Dated: April 8, 1957.

(Sec. 1, 44 Stat. 887; 22 U. S. C. 211a)

For the Secretary of State.

LOY W. HENDERSON,
Deputy Under Secretary for
Administration.

[F. R. Doc. 57-3011; Filed, Apr. 15, 1957; 8:45 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter VI—Business and Defense Services Administration, Department of Commerce

[DMS Regulation No. 1, Direction 4, Amdt. 1 of April 11, 1957]

DMS REG. 1—BASIC RULES OF THE DEFENSE MATERIALS SYSTEM

DIR. 4—SELF-AUTHORIZATION PROCEDURE FOR MRO NEEDED BY CERTAIN PERSONS MRO NEEDED TO FILL DX RATED ORDERS

This amendment is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this amendment, consultation with industry representatives has been rendered impracticable because the amendment affects many different industries.

This amendment affects Direction 4 to DMS Regulation No. 1 by authorizing the use of the rating DX-D-9 to obtain MRO under specified conditions.

Section 3 of Direction 4 to DMS Regulation No. 1 is amended to read as follows:

SEC. 3. *Procurement of products and materials for MRO.* If inability to obtain MRO would result in failure by a person to fill a rated order, an authorized controlled material order, or any other order which he is required to accept by BDSA, or in failure to comply with a directive of BDSA, he may, by self-authorization and without filing any application, use the allotment number D-9 and the rating DO-D-9 in obtaining products and materials required for such MRO. He may place authorized controlled material orders in accordance with the provisions of DMS Regulation No. 1, and shall indicate thereon the allotment number D-9 and the calendar

quarter in which delivery of the controlled materials is required. He may place rated orders to obtain products and materials other than controlled materials (including Class A products for which no production schedules shall be authorized or allotment made) in accordance with the provisions of BDSA Reg. 2 (formerly NPA Reg. 2), and shall indicate thereon the rating DO-D-9; *Provided, however*, That he may indicate thereon the rating DX-D-9 if the inability to obtain MRO would result in failure to fill a DX rated order. In no event shall a person use the allotment number D-9 or the rating DO-D-9 or DX-D-9 to acquire products and materials in a greater amount or on an earlier date than required to provide the MRO necessary to enable him to fill his rated orders, authorized controlled material orders, or other orders which he is required to accept by BDSA, or to enable him to comply with directives of BDSA.

(Sec. 704, 64 Stat. 816, as amended; sec. 1, Pub. Law 632, 84th Cong., 70 Stat. 408; 50 U. S. C. App. 2154)

This amendment shall take effect April 11, 1957.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
H. B. McCoy,
Administrator.

[F. R. Doc. 57-3025; Filed, Apr. 15, 1957; 8:48 a. m.]

[DMS Regulation No. 2, Direction 3, Amdt. 1 of April 11, 1957]

DMS REG. 2—CONSTRUCTION UNDER THE DEFENSE MATERIALS SYSTEM

DIR. 3—SELF-AUTHORIZATION PROCEDURE FOR MRO NEEDED BY CERTAIN CONTRACTORS

MRO NEEDED TO FILL DX RATED CONSTRUCTION SCHEDULES AND ORDERS FOR CONSTRUCTION

This amendment is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this amendment, consultation with industry representatives has been rendered impracticable because the amendment affects many different industries.

This amendment affects Direction 3 to DMS Regulation No. 2 by authorizing the use of the rating DX-D-9 to obtain MRO under specified conditions.

Section 3 of Direction 3 to DMS Regulation No. 2 is amended to read as follows:

SEC. 3. *Procurement of products and materials for MRO.* If inability to obtain MRO would result in failure by a contractor to fill an authorized construction schedule or a rated order for construction, or in failure to comply with a directive of BDSA, he may, by self-authorization and without filing any application, use the allotment number D-9 and the rating DO-D-9 in obtaining products and materials required for such MRO. He may place authorized controlled material orders in accordance

with the provisions of DMS Regulation No. 2, and shall indicate thereon the allotment number D-9 and the calendar quarter in which delivery of the controlled materials is required. He may place rated orders to obtain products and materials other than controlled materials (including Class A products for which no production schedules shall be authorized or allotments made) in accordance with the provisions of BDSA Reg. 2 (formerly NPA Reg. 2), and shall indicate thereon the rating DO-D-9; *Provided, however*, That he may indicate thereon the rating DX-D-9 if the inability to obtain MRO would result in failure to fill an authorized construction schedule bearing a DX rating or in failure to fill a DX rated order for construction. In no event shall a contractor use the allotment number D-9 or the rating DO-D-9 or DX-D-9 to acquire products and materials in a greater amount or on an earlier date than required to provide the MRO necessary to enable him to fill his authorized construction schedule or rated order for construction, or to enable him to comply with a directive of BDSA.

(Sec. 704, 64 Stat. 816, as amended; sec. 1, Pub. Law 632, 84th Cong., 70 Stat. 408; 50 U. S. C. App. 2154)

This amendment shall take effect April 11, 1957.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
H. B. McCoy,
Administrator.

[F. R. Doc. 57-3026; Filed, Apr. 15, 1957; 8:48 a. m.]

Chapter XVIII—National Shipping Authority, Maritime Administration, Department of Commerce

[NSA Order 6 (INS-1, 6th Revision)]

INS-1—MARINE PROTECTION AND INDEMNITY INSURANCE INSTRUCTIONS UNDER GENERAL AGENCY AND BERTH AGENCY AGREEMENTS

Effective as of March 31, 1957, midnight, eastern standard time, NSA Order No. 6 (INS-1, Fifth Revision) published in the FEDERAL REGISTER issue of April 24, 1956 (21 F. R. 2616) is hereby revised to read as follows:

- Sec.
- 1 What this order does.
 - 2 Insurer.
 - 3 Assured.
 - 4 Vessels insured and terms of insurance.
 - 5 Assumption of risk by owner and attachment and cancellation dates of commercial insurance.
 - 6 Issuance of policies or certificates by Underwriter.
 - 7 Insurance premiums.
 - 8 Reports of accidents and occurrences.
 - 9 Settlement of claims.
 - 10 Litigation and employment of counsel.
 - 11 Report of claims.
 - 12 Application and interpretation of this order.

AUTHORITY: Sections 1 to 12, issued under sec. 204, 49 Stat. 1987, as amended; 46 U. S. C. 1114.

SECTION 1. *What this order does.* Effective as of March 31, 1957, midnight,

e. s. t., this order prescribes instructions with respect to the placing of commercial marine protection and indemnity (referred to in this order as "F & I") insurance and the handling of claims of a P & I insurance nature, required to be followed by General Agents and Berth Agents under General Agency Agreements and Berth Agency Agreements respectively, with the United States of America, acting by and through the Director, National Shipping Authority, Maritime Administration, Department of Commerce (referred to in this order as the "Owner").

SEC. 2. *Insurer.* The Continental Insurance Company, New York, New York, (referred to in this order as the "Underwriter"), acting by and through Marine Office of America, 116 John Street, New York 38, New York, (referred to in this order as the "Underwriting Agent"), entered into an insuring agreement with the Owner covering the period from March 31, 1957, midnight, e. s. t., to March 31, 1958, midnight, e. s. t.

SEC. 3. *Assured.* The assureds are (a) the United States of America, acting by and through the Director, National Shipping Authority, Maritime Administration, Department of Commerce, and (b) its General Agents and Berth Agents, and Sub-Agents acting on behalf of either.

SEC. 4. *Vessels insured and terms of insurance.* The Underwriter has agreed to provide P & I insurance with respect to General Agency vessels operated in the employment of the Military Sea Transportation Service (referred to in this order as "MSTS"), for a period of one year from midnight, e. s. t., March 31, 1957, at an annual rate of \$2.78 per gross registered ton on a daily pro rata basis, attaching as provided in section 5 (a), (b), (c), (d), and (e) of this order and terminating as of midnight, e. s. t., March 31, 1958, or in accordance with section 5 subparagraphs (c), (f), (g), and (h) of this order. This insurance covers the vessel's liability of a P & I insurance nature except for any loss, damage or expense in respect to cargo, including baggage and personal effects of passengers, if any, or cargo's proportion of general average or special charges, or in any other way relating to cargo which is to be carried, is being carried, or has been carried on board such vessels. The limit of liability in any claim shall be \$250,000.00 for each accident or occurrence per vessel, with a deduction of \$500 for each accident or occurrence resulting in personal injury, illness, or death, and \$250 for each accident or occurrence of other types except "putting in" and burial expenses. Claims for "putting in" and burial expenses are not subject to any deduction. The Underwriter has agreed to accept liability not to exceed \$200 for burial expenses, and also to include liability, under the same terms, conditions and deductibles as set forth in the policy, to non-paying observers aboard experimental vessels under General Agency operation in the employment of the Military Sea Transportation Service.

SEC. 5. *Assumption of risk by Owner and attachment and cancellation dates of commercial insurance—(a) Vessels allocated and delivered to General Agents at fleet site under General Agency Agreement 3-19-51.* When vessels are allocated and delivered to General Agents at fleet site, the Owner will assume the risks of a P & I insurance nature from the date and hour of the vessel's delivery to the General Agent at fleet site to 12:01 a. m. (local time) of the day the vessel is accepted by MSTs, or until 12:01 a. m. (local time) of the date of initial signing on of crew under articles (not the effective date in the event articles are dated retroactively), whichever shall occur first. (See NSA Order No. 49 (DTO-1), revised, for particulars). As of that time, the P & I risks shall be commercially insured with the Underwriter, and the General Agents shall arrange with the Underwriting Agent to have the insurance so attached.

(b) *Vessels delivered from bareboat charter and allocated for operation under General Agency Agreement 3-19-51.* When vessels are delivered from bareboat charter and delivered to General Agents for operation under General Agency Agreement 3-19-51, the P & I insurance risks shall be commercially insured with the Underwriter and the General Agents shall arrange with the Underwriting Agent to have P & I insurance attached as of the date and hour of the vessel's delivery under the Agreement.

(c) *Vessels transferred from one General Agent to another under General Agency Agreement 3-19-51.* When a vessel is withdrawn from operation under one General Agent and allocated to another for operation, the respective General Agents shall, unless advised to the contrary, arrange with the Underwriting Agent for the termination and reattachment of P & I insurance as of the respective dates and hours of redelivery and delivery of the vessel from and to the respective General Agents.

(d) *New vessels allocated and delivered under General Agency Agreement 3-19-51.* When new vessels are allocated and delivered to General Agents directly from the builder's yard, the General Agents shall, unless advised to the contrary, arrange for commercial P & I insurance with the Underwriter and request the Underwriting Agent to have the insurance attach as of the date and hour of the vessel's delivery under the Agreement.

(e) *Vessels presently in operation under General Agency Agreement 3-19-51.* In respect to the vessels in operation on the effective date of the new P & I insurance contract, the General Agents shall immediately declare such vessels to the Underwriting Agent and/or Underwriter, and the insurance shall attach on each such vessel in accordance with the new P & I insurance contract as of midnight, e. s. t., March 31, 1957.

(f) *Vessels designated for redelivery.* General Agents shall terminate the commercial P & I insurance on these vessels as of midnight (local time) of the day the vessel is redelivered by MSTs to the Gen-

eral Agent or midnight (local time) of the day the articles are terminated, whichever shall last occur.

(g) *Vessels in reduced operational status and subsequently designated for stripping and lay up.* General Agents shall terminate the commercial P & I insurance on those vessels as of midnight, e. s. t., of the date they receive notice to the effect that the vessels are designated for stripping and lay up.

(h) *Notice of attachment and termination of insurance.* General Agents shall promptly notify the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C., of the date and hour of the attachment or of the termination of P & I insurance after either is effected in accordance with paragraphs (a), (b), (c), (d), (e), (f) and (g) of this section.

SEC. 6. *Issuance of policies or certificates by Underwriter.* The Underwriting Agent, upon receipt of applications from General Agents, will arrange for execution and delivery of the Underwriter's policy and/or certificates to such General Agents with respect to each vessel named in such applications. The Underwriting Agent will also obtain and furnish such copies of policies and/or certificates as may be required by the Owner and the General Agents. The original of all policies and/or certificates shall be promptly forwarded by each General Agent to the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Department of Commerce, Washington 25, D. C. Upon cancellation of this insurance, the Underwriter will issue an endorsement with respect to such cancellation, showing the cancellation date and amount of return premium.

SEC. 7. *Insurance premiums—(a) Payment of premiums.* Premiums for P & I insurance provided under the policies shall be paid by each General Agent quarterly, in advance, for the period from the date of attachment of such insurance to March 31, 1957, midnight, e. s. t. Brokerage, if any, shall be allowed, but in no event to exceed 1¼ percent of the annual premiums for each commenced quarter.

(b) *Return premiums.* Each General Agent shall be responsible for collection or obtaining credit for return premiums provided for in the current policy for all vessels insured with the Underwriter pursuant to this order. Such return premiums shall be computed in accordance with the provisions of such policy. Statements or credit memoranda shall be obtained in duplicate from the Underwriter; the originals thereof shall be filed in the General Agent's office and shall be subject to inspection by the Owner's auditors. The duplicate copies thereof shall be forwarded to the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C.

SEC. 8. *Reports of accidents and occurrences—(a) Reports to Underwriter.* All accidents and occurrences of a P & I insurance nature, arising subsequent to the attachment of P & I insurance (as

provided in section 5 of this order) shall be promptly reported by General Agents to the Underwriter and/or the Underwriting Agent, together with all available information. The General Agents shall also obtain the names of the Underwriter's outport representatives from the Underwriting Agent and supply such information to the Master of each vessel so that he may report to and/or obtain from these representatives such information and assistance as may be required under the circumstances.

(b) *Reports to Owner.* All accidents and occurrences of a P & I insurance nature, arising prior to the attachment and subsequent to the termination of this insurance (as provided in section 5 of this order) shall be reported to the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C.

SEC. 9. *Settlement of Claims—(a) On risks insured under commercial marine protection and indemnity policies.* General Agents of vessels described in this order are hereby authorized to settle without prior approval, all claims of a P & I insurance nature where the settlement amounts do not exceed the applicable deductions set forth in the P & I policy. When the proposed settlement amounts of such claims exceed the applicable deductions, General Agents shall obtain the Underwriter's approval of the proposed settlements and, immediately after payment in full, or, of any portion thereof over the applicable deductions, make formal claim for reimbursement from the Underwriter. All claims which do not exceed the deduction in the policy are chargeable to vessel expense and shall be accounted for in accordance with current accounting and/or auditing instructions. When settling any claim, the General Agent shall advise the claimant that such settlement is not to be construed as an admission of liability by or on behalf of the Owner, or its General Agents and Berth Agents or their Sub-Agents, but that the settlement is a compromise of a disputed claim. General Agents shall be expected to apply sound judgment and follow standard practices of steamship operators in the settlement or other disposition of P & I claims and shall avail themselves of the advice and assistance of the Underwriter, and may also consult with the appropriate District Counsel of the Maritime Administration, and the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C. Berth Agents shall furnish reports and render all necessary assistance to the General Agents in handling P & I insurance claims. A claim shall be settled only when the amount of the settlement is reasonable under the circumstances, is adequately supported, and is in the best interests of the United States.

(b) *On risks assumed by the Owner.* General Agents are hereby authorized to settle claims of a P & I insurance nature, arising under conditions where the risk is assumed by the Maritime Administration (as set forth in section 5 of this order), without prior approval, provided the proposed settlement amount of each claim does not exceed \$1,000.00. If the

proposed settlement amount of any such claim exceeds \$1,000.00 the General Agent shall, prior to payment, obtain the approval of the proposed settlement from the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C. The amounts and costs of these settlements are chargeable to vessel operating expense and shall be accounted for in accordance with current accounting and/or auditing instructions. When settling any claim hereunder, General Agents shall be governed by the procedure and instructions set forth in paragraph (a) of this section insofar as applicable.

(c) *Claims declined by Underwriters.* Any claim of a P & I insurance nature, whether arising prior or subsequent to March 31, 1957, which has been declined by this Underwriter, or by any other Underwriters under prior insuring agreements, shall be forwarded to the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C., for review and further instruction.

SEC. 10. *Litigation and employment of counsel.* (a) As to any suit arising out of the activities of a General Agent in the course of his official duties, wherein the General Agent is named a party or one of the parties respondent or defendant, and whether or not the risk is covered by P & I insurance, such General Agent shall immediately, by air mail, forward copies of the pleadings and all other related legal documents to the General Counsel, Maritime Administration, Department of Commerce, Washington 25, D. C., and to the Attorney General, Admiralty and Shipping Section, Department of Justice, Washington 25, D. C. No General Agent, Berth Agent, or Sub-Agent, shall incur any legal expenses in connection with any claim covered by P & I insurance unless approved in advance by the Underwriter, or in connection with any other claim unless approved in advance by the General Counsel, Maritime Administration, except in an emergency where time will not permit such approval to be obtained.

(b) In addition to the foregoing, in the case of any attachment or seizure of a vessel, whether or not the risk is covered by P & I insurance, the General Agent shall immediately, by telegram, radio, or cable, notify the nearest Maritime Administration representative or the General Counsel, Maritime Administration, Washington 25, D. C.

SEC. 11. *Report of claims.* (a) All General Agents shall submit to the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C., semi-annual reports of all claims, listed separately as per the attached form.

(b) The first of such reports shall cover the semi-annual period ending June 30, 1957, and shall be submitted as soon as possible after said date. Subsequent reports shall be made promptly after the conclusion of each semi-annual period thereafter. A claim previously reported as closed shall not be reported on subsequent statements unless it is reopened. The reporting requirements of

this order have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

SEC. 12. *Application and interpretation of this order.* General Agents shall communicate directly with the Chief, Division of Insurance, Office of Comptroller, Maritime Administration, Washington 25, D. C., regarding all questions of application, interpretation, or intent of this order.

Notice and public procedure are not necessary prerequisites to the promulgation of this revised order. This revised

order makes no substantial change in the prior rules and it is in the public interest that the effective date shall be March 31, 1957; accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Dated: March 29, 1957.

[SEAL] CLARENCE G. MORSE,
Director, National Shipping
Authority, Maritime Adminis-
tration, Department of Com-
merce.

Vessel	Name of injured or claimant	Nature and date of injury, loss, or damage	Amount(s) paid if any	Date and amount of billing to underwriter	Date and amount of reimbursement received from underwriter	Estimated future cost	Status and/or remarks
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INSURED CLAIMS RECORDED SINCE LAST REPORT

INSURED CLAIMS PAID OR CLOSED SINCE LAST REPORT

INSURED CLAIMS PENDING AS OF DATE OF THIS REPORT

ASSUMED RISK CLAIMS RECORDED SINCE LAST REPORT

ASSUMED RISK CLAIMS PAID OR CLOSED SINCE LAST REPORT

ASSUMED RISK CLAIMS PENDING AS OF DATE OF THIS REPORT

[F. R. Doc. 57-2338; Filed, Apr. 15, 1957; 8:45 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 11435; FCC 57-355]

PART 11—INDUSTRIAL RADIO SERVICES

WITHDRAWAL OF AMENDMENTS

In the matter of amendment of Part 11 of the Commission's rules and regulations.

1. By Report and Order of September 19, 1956 (FCC 56-894—released September 21, 1956) in the above-entitled proceeding, the Commission amended its rules governing operation in the Power Radio Service to provide therein for the eligibility of communications common carriers having requirements for radio in connection with the performance of construction and maintenance activities. In making the carriers so eligible, the Commission gave them access to a total of three frequency-pairs (six frequencies) in the 450-460 Mc band, such frequencies, of course, to be assigned only for Developmental Operation, and to be shared with other eligibles in the Power Radio Service and with licensees in the other Industrial Radio Services.

2. The Commission subsequently received a number of timely filed petitions and other documents variously requesting reconsideration and/or rehearing with respect to the foregoing Report and Order. Generally speaking, these pleadings level procedural and substantive attacks against the said Report and Order and raise questions with respect to both aspects thereof, namely, eligibility and frequencies to be assigned. By Memorandum Opinion and Order of October 24, 1956 (FCC 56-1038—released October 26, 1956), the Commission stayed

the effective date (October 29, 1956) of the amendments involved pending disposition of the above petitions and other documents.¹

3. Meanwhile, progress in other matters having important connection with the instant proceeding has been effected at a faster pace than was originally anticipated. Thus, the Commission is now in a position to conclude that continued developmental operation in the 450-460 Mc band (the band here involved) is neither necessary nor appropriate. In view thereof, the Commission is this day proposing, in a separate proceeding, to place operation in this band on a regular basis.² Additionally, in that proceeding, the Commission is proposing a reduction of channel spacing between the existing frequencies in the said band below the figure presently obtaining; if adopted, this proposal will result in an approximate doubling of frequencies available for assignment.

4. In considering the distribution to be made of the regularized 450 Mc channels, the Commission has afforded substantial weight to the inherent need of the telephone industry for a number of exclusive channels. The six frequencies involved in the instant proceeding have relatively light mobile loading; nevertheless, to propose these six frequencies as exclusively available to the carriers

¹ On December 12, 1956, there was filed with the Commission a "Petition to Vacate Order of Stay of Report and Order" by the United States Independent Telephone Association (USITA). This petition requests the Commission to set aside its Order of October 24, 1956, to deny the petitions and other documents seeking reconsideration and/or rehearing, and to reinstate as fully effective the Report and Order of September 19, 1956.

² See Notice of Proposed Rule Making in Docket No. 11991, FCC 57-356.

could ultimately result in a certain amount of frequency-changeovers, with attendant inconvenience and expense to the licensees affected. Although this consideration is not of absolute significance, the Commission sees logic in a choosing of frequencies from those to be gained by the reduction in channel separations. Particularly is this true when it is recalled that no assignments on the frequencies involved in the instant proceeding have as yet been made to carriers—or can be made until such time as the stay order herein might be dissolved. Thus, the time-considerations inherent in the instant proceeding, as well as the other factors discussed above, play a part in the determination in Docket No. 11991 to propose different frequencies (than those previously announced) for the regular and exclusive use of the communications common carriers.*

5. One effect of the above procedure is to render largely academic those questions presented by the reconsideration pleadings filed herein which relate to the matter of frequencies to be assigned. Of remaining import in this proceeding, then, is the question of carrier eligibility in the Power Radio Service. Because the procedural and substantive arguments challenging such eligibility are, in large part, inextricably grounded in con-

siderations relating to existing and potential channel-loading, it appears to be more expedient to repropose such eligibility in the proceeding above referred to than to pursue, in the instant proceeding, matters of no-longer-practical consequence. Accordingly, such is there done.

6. By virtue of the above, the Commission believes that the best procedure here is to withdraw its Report and Order, to withdraw its Notice of Proposed Rule Making, and to terminate the entire proceeding. One important effect of these actions is to render moot the petitions* and other documents filed subsequent to the above Report and Order, and they are hereinafter dismissed as such. All participants in this proceeding are free, of course, to participate in the proceeding in Docket No. 11991, above referred to. In the circumstance that the foregoing procedures preclude common carriers from obtaining assignments in the 450 Mc band until such time as appropriate portions of Docket No. 11991 may be finalized, the Commission sees but minimal significance, since it is believed that most such carriers would be reluctant to make expenditures for Developmental Operations with an early regularization of different frequencies a distinct possibility.

7. In view of all of the foregoing, *It is hereby ordered*, This 3d day of April, 1957:

(a) That the Report and Order of September 19, 1956 (FCC 56-894—released September 21, 1956; 21 F. R. 7348) in the above-entitled proceeding is hereby withdrawn;

(b) That the several petitions and other documents filed in the above-entitled proceeding subsequent to the above Report and Order therein are hereby dismissed as moot;

(c) That the Notice of Proposed Rule Making of June 29, 1955 (FCC 55-737—released June 30, 1955; 20 F. R. 4777) and the Order and Further Notice of Proposed Rule Making of September 7, 1955 (FCC 55-933—released September 8, 1955; 20 F. R. 6751) in the above-entitled proceeding are hereby withdrawn; and

(d) That the above entitled proceeding is hereby terminated.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Released: April 9, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,*

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F. R. Doc. 57-2880; Filed, Apr. 15, 1957;
8:45 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF COMMERCE

National Bureau of Standards

[15 CFR Part 260]

STANDARD FOR SAFETY DEVICES ON HOUSEHOLD REFRIGERATORS

NOTICE OF PROPOSED RULE MAKING

Pursuant to section 4 of the Administrative Procedures Act (60 Stat. 238; 5 U. S. C. 1003) notice is hereby given of the proposed issuance of the following standard relating to safety devices on household refrigerators in accordance with the provisions of the act of August 2, 1956 (70 Stat. 953; 5 U. S. C. 1211-14). The act of August 2, 1956, supra, directs the Secretary of Commerce to timely prescribe and publish a standard for a safety device which would enable refrigerators to be easily opened from the

inside. The standard would be applicable to all household refrigerators manufactured and introduced or delivered for introduction into interstate commerce.

The following proposed draft of a standard is released at this time for discussion and comment. All interested parties are invited to submit suggestions or proposals for changes in the standard on or before May 31, 1957, so that they may be considered prior to its official promulgation. All communications on this subject should be addressed to the Director, National Bureau of Standards, Washington 25, D. C.

Dated: April 12, 1957.

A. V. ASTIN,
Director,
National Bureau of Standards.

Approved:

SINCLAIR WEEKS,
Secretary of Commerce.

* Including that of USITA—see footnote 1.

PART 260—STANDARD FOR DEVICES TO PERMIT THE OPENING OF HOUSEHOLD REFRIGERATOR DOORS FROM THE INSIDE

I. Authority.

Public Law 930, 84th Congress, Chapter 890, 2d Session, H. R. 11969.

An act to require certain safety devices on household refrigerators shipped in interstate commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after the date this section takes effect unless it is equipped with a device, enabling the door thereof to be opened from the inside, which conforms with standards prescribed pursuant to section 3.

Sec. 2. Any person who violates the first section of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both.

* Commissioners Hyde, Doerfer, and Mack not participating.

*It is proposed in Docket No. 11991 that a total of five frequency-pairs (ten frequencies) in the 450 Mc band be made available for assignment to the communication common carriers.

SEC. 3. The Secretary of Commerce shall prescribe and publish in the FEDERAL REGISTER commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this section shall be so prescribed and published not later than one year after the date of the enactment of this act.

SEC. 4. As used in this act, the term "interstate commerce" includes commerce between one State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico.

SEC. 5. This act shall take effect on the date of its enactment, except that the first section of this act shall take effect one year and 90 days after the date of publication of commercial standards first established under section 3 of this act. In the event of a change in said commercial standards first established, a like period shall be allowed for compliance with said change in commercial standards.

APPROVED: August 2, 1956.

II. *Definitions.* As used in this standard, unless the context specifically states otherwise:

1. The term "act" means Public Law 930, 84th Congress, 2d Session, H. R. 11969.

2. The term "device" means the mechanism or the means provided for enabling the doors of household refrigerators to be opened from the inside.

3. The term "effective date" means the date under the provisions of the act after which all household refrigerators manufactured and introduced or delivered for introduction into interstate commerce must comply with this standard. This date is _____, 195__.

4. The term "household refrigerator" means a cabinet or any part of a cabinet designed for the storage of food at temperatures above 32° F. having a source of refrigeration and intended for household use.

5. The term "opened" as applied to a refrigerator door means to effect release of the latching mechanism so that a trapped child would have to apply little or no further effort in order to escape.

6. The term "shelving" means any shelf, basket, drawer, or baffle which can be readily removed from the refrigerator without the use of tools.

III. *Scope and application.* This standard shall apply to devices furnished with household refrigerators manufactured and introduced or delivered for introduction into interstate commerce after the effective date which enable such refrigerators to be opened from the inside. The requirements of this standard shall apply to household refrigerators in their normal operating position only. The releasing feature(s) of the device shall be accessible to all spaces, bounded by interior walls or shelving, which are directly accessible when the exterior hinged door(s) is (are) opened, and which in addition have a minimum dimension of 8 inches or more and a volume of two cubic feet or more, existing either with all shelving

in place or as the result of the removal or the rearrangement of any or all of the shelving.

IV. *General requirements.* Household refrigerators shall be equipped with a device enabling the doors thereof to be opened easily from the inside, either by the application of an outwardly directed force to the inside of the door, or by the rotation of a knob similar to a conventional doorknob.

V. *Detailed requirements*—1. *Releasing forces.* As determined by the tests called for in section VI, the device shall permit the refrigerator door to be opened (a) on the application of a force equivalent to one which, if directed perpendicularly to the plane of the door and applied anywhere along the latch edge of the inside of the closed door, shall not exceed 15 lbs, or (b) on the application of clockwise or counterclockwise turning moment of not more than 5 in.-lb. to a knob on the door through an angle of rotation of 45° ($\pm 15^\circ$) in either direction.

2. *Description and location of knob.* The knob shall resemble a conventional doorknob in shape and size, and shall be mounted near the latch side of the door extending into the cabinet at least $\frac{1}{4}$ in. beyond any inner door surface within a six-inch radius of the knob center. The knob shall be mounted in such a manner that there is a minimum of $\frac{3}{4}$ in. clearance between the inner periphery of the knob and adjacent inner door surfaces.

3. *Wear.* The device shall comply with the requirements of section V 1 of this standard after 300,000 cycles of operation of the door as determined by the tests called for in section VI.

4. *Protection against adverse effects from spillage, cleaning, defrosting, and condensation.* Devices shall be designed so that spillage of foods or beverages, cleaning or defrosting in accordance with manufacturer's recommendations, or normal condensation will not so adversely affect the operation of the device as to result in its failure to meet the requirements of section V 1, as determined by the tests called for in section VI.

5. *Power supply.* The device shall operate in accordance with the requirements of this standard with the electric, gas, or other fuel supply either on or off.

VI. *Tests.* It is the intent of this standard that where tests are not specified, the general and detailed requirements shall be checked by inspection, simple measurement, and by consideration of pertinent standard commercial practices. Compliance with requirements V 1, V 3, and V 4 shall be checked with the aid of the following tests:

1. *Test for releasing force on door.* The force measurements shall be made by means of a force gage with a calibrated accuracy within ± 0.3 lb. when measuring a force of 15 lbs. The dial of the gage shall be graduated with finest divisions not exceeding 0.2 lb., and the full-scale range shall not exceed 30 lbs. Measurements shall be made at three points on the door near the inside latch

edge—one point near the top of the interior space created by removal of all shelving, one point near the bottom, and one point midway between these two points. The requirements of V 1 (a) of this standard shall be satisfied.

2. *Test for knob torque.* The measurement of the turning moment required to operate the knob release shall be made with a torque gage adapted for attachment to the knob or knob shaft. The gage shall have a calibrated accuracy within ± 0.10 in.-lb. when measuring a moment of 5 in.-lb. The finest graduations on the dial of the gage shall correspond to a moment increment not greater than 0.10 in.-lb., and the full-scale range shall not exceed 10 in.-lb. in each direction from the null reading. The turning moment shall be applied so as to rotate the knob the full amount required for release, in both a clockwise and a counterclockwise direction. The angle of rotation required for release shall be checked by means of an angle gage adapted to measure the angle of rotation about the longitudinal axis of the knob shaft. The gage shall have a calibrated accuracy within $\pm 1^\circ$ at an angle of 45°, and the finest divisions shall not exceed 1°. The requirements of V 1 (b) of this standard shall be satisfied.

3. *Simulated use test.* Tests shall be conducted on the completely assembled refrigerator in its normal operating position to determine that the release device complies with the requirements of section V during and after 300,000 cycles of door operation, and following exposure to spillage of foods and beverages, to cleaning and defrosting, in accordance with manufacturer's recommendations, and to condensation. The equipment provided for operating the door shall open the door sufficiently on each cycle to assure a complete cycle of operation for the latch mechanism.

VII. *Provision for changes in the standard.* Section 5 of the act provides for the possibility of changes in the commercial standard first established pursuant to section 3 of the act and allows a period of one year and ninety days for compliance with such changes after they are published.

Any person wishing to propose a change in this commercial standard shall submit to the Director, National Bureau of Standards, United States Department of Commerce, Washington 25, D. C., the proposed change. Before a change is recommended, the Director, National Bureau of Standards, shall secure advice and consultation from public or private sources including particularly the household refrigerator manufacturing industry and the Children's Bureau of the Department of Health, Education, and Welfare, and shall then forward such proposal with his recommendation to the Secretary of Commerce for such action as the Secretary deems appropriate.

[F. R. Doc. 57-3058; Filed, Apr. 15, 1957; 8:52 a. m.]

FEDERAL COMMUNICATIONS
COMMISSION

[47 CFR Part 2]

[Docket No. 11959; FCC 57-353]

FREQUENCY ALLOCATIONS AND RADIO
TREATY MATTERS; GENERAL RULES AND
REGULATIONS

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of Part 2 of the Commission's Rules and Regulations; reallocation of certain fixed, land mobile and maritime mobile bands between 25 and 470 Mc.

1. Notice is hereby given of proposed rule making in the above entitled matter.

2. Pursuant to the Commission's decisions in Docket No. 11253, which involved the reduction of spacing between assignable frequencies in the 152-162 Mc band, it is now proposed that certain bands within this range be reallocated. In addition to these changes, certain reallocations are proposed in the band 25-30 Mc and in the band 450-470 Mc. It is further proposed to reduce the spacing between assignable frequencies in the latter band from 100 kc to 50 kc.

3. The proposed amendments to Part 2 are being issued concurrently with proposed amendments to Parts 10, 11, 12, 16, 19 and 21 of the Commission's rules and regulations.¹

4. The proposed amendments set forth below indicate in which portions of the previously mentioned bands changes are being proposed. For convenience, the Appendix also shows the existing allocations in the subject bands.

5. It should be noted that a portion of the proposal involves the deletion of the allocation 455-456 Mc to remote pickup broadcast stations and the allocation of six 30 kc channels in the band 161.645-161.825 Mc to remote pickup broadcast stations on an exclusive basis. Since this is the first time that a proposal has been made to reduce to 30 kc the spacing between assignable frequencies used by remote pickup stations, comments from the broadcasting industry are solicited as to the feasibility of operation with such frequency separation with particular regard to any special requirements of remote pickup stations. Comments may also be directed toward the adequacy of the remaining remote pickup allocation in the band 450-451 Mc. Any showing of requirements for greater frequency separations between assignable frequencies must be supported by comprehensive engineering data.

6. It should also be pointed out that in the event the Commission should determine that remote pickup stations require frequency separations greater than 30 kc, it may be necessary to expand the allocation at approximately 161.645 Mc to remote pickup stations and to reduce the allocation to the Land Transportation Service at this order of frequency.

7. In respect to the maritime mobile service, in the 152-162 Mc band the Com-

mission is proposing to reduce separations between assignable frequencies from 100 kc to 50 kc and to extend the allocation to this service so as to include the band 161.825 Mc to 162.0 Mc. The frequencies separated from 156.8 Mc by 50 kc would not be made available. Additionally, comments are being requested as to the desirability of providing for the assignment of the frequency 161.6 Mc to the maritime mobile service so as to make the United States allocation compatible with the Baltic-North Sea Agreement reached at The Hague, 1957, insofar as this frequency is concerned. This frequency, to be useful, would be required as a 50 kc channel and would need to be protected from any harmful interference caused by the land mobile service. This frequency, paired with 157.00 Mc is the number one choice in The Hague Agreement for duplex port operations and the question involved here is to determine whether such operations on these two frequencies would be desirable.

8. The proposed amendments would delete the existing secondary allocation to the Public Safety service of the frequencies 156.27 to 157.47 Mc inclusive, 159.51 to 161.79 Mc inclusive and 161.85 to 161.97 Mc inclusive.

9. The proposed amendments to the rules are set forth in the attached Appendix and are issued pursuant to the authority of sections 303 (c), (f) and (r) of the Communications Act of 1934, as amended.

10. Any interested person who is of the opinion that the proposed amend-

ments should not be adopted may file with the Commission on or before June 10, 1957, written data, views or arguments setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Comments in reply to the original comments may be filed within 10 days from the last day for filing said original data, views or arguments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

11. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: April 3, 1957.

Released: April 9, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

It is proposed to amend Part 2, § 2.104 (a) so as to reallocate certain fixed, land mobile and maritime mobile bands between 25 and 470 Mc. For ease of comparison, these bands together with the existing and proposed allocations are shown below:

Existing allocation		Proposed allocation	
Band (Mc)	Service and channeling	Band (Mc)	Service and channeling ¹
26.96-27.23	Amateur (27.12) ISM	26.96-27.23	Citizens Radio (27.12) ISM.
152.24-152.48	Land Transportation (30 kc channeling)	152.24-152.48	Land Transportation (30 kc channeling)
152.84-153.74	Industrial (60 kc channeling)	152.84-153.74	Industrial (30 kc channeling)
153.74-154.46	Public Safety (60 kc channeling)	153.74-154.46	Public Safety (30 kc channeling)
154.46-154.62	Industrial (60 kc channeling)	154.46-154.62	Industrial (30 kc channeling)
154.62-156.25	Public Safety (60 kc channeling)	154.62-156.25	Public Safety (30 kc channeling)
156.25-157.45	Maritime Mobile (100 kc channeling beginning on 156.3 Mc)	156.25-157.45	Maritime Mobile (50 kc channeling beginning on 156.3 Mc)
157.45-157.74	Land Transportation (60 kc channeling)	157.45-157.74	Land Transportation (30 kc channeling)
159.48-161.85	Land Transportation (60 kc channeling)	159.48-161.85	Land Transportation (30 kc channeling)
161.85-162.0	Maritime Mobile (100 kc channeling on 161.9 and 162.0 Mc)	161.85-162.0	Remote Pickup (30 kc channeling), Maritime Mobile (50 kc channeling on 161.85, 161.9, 161.95 and 162.0 Mc)
173.2-173.4	Industrial (50 kc channeling)	173.2-173.4	Industrial (25 kc channeling)
454-455	Domestic Public (100 kc channeling)	454-455	Domestic Public (50 kc channeling)
455-456	Remote Pickup (100 kc channeling)	455-456	Domestic Public (50 kc channeling)
459-460	Domestic Public (100 kc channeling)	459-460	Domestic Public (50 kc channeling)
460-470	Citizens Radio (no channeling)	461-464.725	Industrial (50 kc channeling)
		464.725-465.275	Citizens Radio
		465.275-470.0	Industrial (50 kc channeling)

¹ It is proposed to change the spacing of all of the land mobile assignable frequencies in the band 152-162 Mc from 60 kc to 30 kc and in the band 450-460 Mc from 100 kc to 50 kc with provision for interspersed assignments.

² At the Baltic-North Sea Maritime Conference, The Hague, 1957, countries bordering these waters agreed to assign the frequency pair 157.00 and 161.60 Mc to ships and coast stations respectively, for duplex port operation functions. Comments are requested on whether these two frequencies should also be assigned by the United States for this function with the provision that 161.60 Mc be protected from harmful interference from the land mobile service (protected from harmful interference from the fixed service in Puerto Rico and the Virgin Islands).

³ It is proposed to delete Public Safety sharing of frequencies 156.27 to 157.47 Mc inc., 161.85 to 161.97 Mc inc., and 159.51 to 161.79 Mc inc.

⁴ It is proposed to assign the frequencies between the old 60 kc channels to the Industrial Service for use outside of standard metropolitan areas of 50,000 or more population.

⁵ The frequencies 50 kc below and 50 kc above 156.8 Mc will not be assigned.

⁶ Existing remote pickup secondary sharing denoted by footnote NG6 in the Table of Frequency Allocations will remain unchanged.

⁷ Frequencies in this band are not available for assignment to Remote Pickup stations in Puerto Rico and the Virgin Islands.

⁸ The frequency 161.85 will not be assigned to the maritime mobile service in Puerto Rico or the Virgin Islands.

⁹ Footnote NG40 will be amended to read: The frequency band 160.86-161.40 Mc is available for assignment to remote pickup base and remote pickup mobile stations in Puerto Rico and the Virgin Islands only, on a shared basis with the Land Transportation Radio Service.

¹⁰ Footnotes NG11, NG19, and NG37 will be deleted.

¹¹ See F. R. Docs. 57-2882 through 57-2887, infra.

[47 CFR Part 10]

[Docket No. 11990; FCC 57-354]

PUBLIC SAFETY RADIO SERVICES

NOTICE OF PROPOSED RULE MAKING¹

In the matter of amendment of Part 10 of the Commission's Rules Governing the Public Safety Radio Services to modify existing services, create new services, and effect changes in the availability of frequencies.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission, in Docket Number 11253,² determined that the spacing between assignable frequencies in the 152-162 Mc bands shall be reduced from 60 kc to 30 kc effective November 1, 1963, with provision for a further reduction to 15 kc separation in the future. In that proceeding the Commission stated that determination of the "service-allocation of the new assignable frequencies to become available in the 152-162 Mc band, as a result of the decision taken herein" will be made in subsequent rule-making proceedings.

3. It is proposed by this rule making proceeding to implement the Commission's decision in Docket Number 11253, insofar as the Public Safety Radio Services are concerned by:

(a) Removing the developmental limitation presently applicable to frequencies between 453.050 Mc through 453.950 Mc and 458.050 Mc through 458.950 Mc, and making frequencies in these bands, separated by 50 kc, assignable on a regular basis.

(b) Establishing a Local Government Radio Service and an Interstate Highway Service within the Public Safety Radio Services.

(c) Restricting the permissible communications which may be transmitted by stations licensed in the Police Radio Service, the Fire Radio Service, the Forestry-Conservation Radio Service, and the Highway Maintenance Radio Service to communications essential to official police, fire, forestry-conservation and highway maintenance activities of the licensee, respectively.

(d) Deleting from the frequencies available for assignment to stations licensed in the Police, Fire, Forestry-Conservation, Highway Maintenance, and Special Emergency Radio Services all frequencies presently shared with other services where such sharing is on the condition that no harmful interference is caused licensees of such other services.

(e) Adding to the frequencies available for assignment to stations licensed in the Forestry-Conservation, Highway Maintenance and Special Emergency Services, certain of the frequencies which will become available for assignment, as a result of the Commission's decision in Docket Number 11253, and frequencies, on a shared basis with other Public Safety Radio Services, in the bands 453.050 Mc

through 453.950 Mc and 458.050 Mc through 458.950 Mc obtained as a result of reducing the separation between assignable frequencies from 100 kc to 50 kc.

(f) Adding to the frequencies available for assignment to stations licensed in the Police and Fire Radio Services frequencies, on a shared basis with other Public Safety Radio Services, in the bands 453.050 Mc through 453.950 Mc and 458.050 Mc through 458.950 Mc which result from the reduction of the separation between assignable frequencies from 100 to 50 kc.

(g) Amending various sections of Subparts A through E of Part 10 made necessary by the establishment of the proposed Local Government and Interstate Highway Radio Services.

4. The proposal to remove the developmental limitation from assignable frequencies in the frequency bands 453.050 Mc through 453.950 Mc and 458.050 Mc through 458.950 Mc is founded upon the Commission's belief, supported by reports submitted by licensees and other available information, that continued developmental operation in these bands is unnecessary. The Commission believes that the most efficient use of these frequency bands can be obtained by reducing the separation between assignable frequencies, thereby providing additional assignable channels. Information presently available leads the Commission to believe that provision for assignable frequencies separated by 50 kc in these bands will be reasonable and will materially aid in their efficient use.

5. The proposed Local Government Radio Service is intended to permit licensees, which would be restricted to governmental subdivisions, to transmit any communication essential to any official activity of such licensee. Thus, the establishment of this proposed service will permit governmental subdivisions to transmit all types of administrative messages as well as any type of emergency communication so long as such communication is essential to some official activity of the governmental subdivision.

It is anticipated that this service will be of great benefit to small governmental subdivisions having limited funds because, for the first time, the Commission's Rules will specifically provide a service wherein such governmental subdivisions may perform all essential official communications on one communications system. The Commission does not propose to prohibit governmental subdivisions from being licensed in both the Local Government Radio Service and the more specific services such as the Police and Fire Radio Services. Therefore, it is anticipated that larger governmental subdivisions will also benefit by establishment of the Local Government Radio Service because, by resort to it, they would be allowed to transmit essential communications not permitted by stations licensed in the more specific services and at the same time continue their emergency operations, using communication systems licensed in the more specific services.

In order to insure that both small and large governmental subdivisions may efficiently operate in this service, the

Commission proposes to restrict the power and antenna heights which may be utilized for operation on certain of the assignable frequencies to 180 watts input to the final radio frequency stage and 50 feet above ground level, respectively. The frequencies which the Commission proposes to make available for assignment to stations in the proposed Local Government Radio Service are: 81 frequencies in the 152-162 Mc band which would be available only to stations in this service; 3 narrow band-edge channels in the 152-162 Mc band which would be available for developmental operation on a shared basis with stations in other services within the Public Safety Radio Services; and 38 frequencies in the 450-460 Mc band which would also be available on a shared basis with other services within the Public Safety Radio Services.

The frequencies in the 152-162 Mc band which would be available for assignment exclusively to stations in this service are composed entirely of those obtained by the reduction of separation between assignable frequencies pursuant to the decision in Docket Number 11253. Of these frequencies 26 are offset by 30 kc and 55 are offset by 15 kc from frequencies presently assignable to stations in the Public Safety Radio Services.

The 3 narrow band-edge channels in the 152-162 Mc band, which would become available to stations in the proposed service on a shared basis with stations in other services within the Public Safety Radio Services, are those bands which appear at the edges of present allocations to Public Safety Radio Services.

The frequencies in the 450-460 Mc band which would become assignable on a regular basis to stations in this service are composed entirely of those frequencies presently assignable to stations in the Public Safety Radio Services and those which would result from reduction of the separation between assignable frequencies from 100 to 50 kc.

6. The proposal to establish an Interstate Highway Radio Service with permissible communications limited to those essential to maintenance, supervision, or operation of highways which meet the design and construction standards approved for highways forming a part of the National System of Interstate and Defense Highways³ represents an effort by the Commission to provide a satisfactory means of meeting the anticipated radiocommunications requirements of such highways.

The Federal-Aid Highway Act of 1956 (Public Law 627, 84th Congress, 2d Session)⁴ provides that the geometric and construction standards for highways forming a part of the Interstate System shall be those approved by the Secretary of Commerce of the United States in cooperation with the various State Highway Departments.

Pursuant to the above-referred-to provision of the Federal-Aid Act, certain

² Hereinafter referred to as the Interstate System.

³ Hereinafter referred to as the Federal-Aid Act.

¹ In the Matter of Amendment of Parts 2, 6, 10, 11, and 16 of the Commission's Rules to Reduce Separation Between Assignable Frequencies in the 25-50 Mc and 152-162 Mc Bands (adopted September 19, 1956).

standards⁴ have been approved for highways forming a part of the Interstate System. Those standards include requirements that all sections of the Interstate System be composed of controlled access highways and that "the design speed of all highways on the system shall be at least 70, 60, and 50 miles per hour for flat, rolling and mountainous topography, respectively" and "should be at least 50 miles per hour" in urban areas.

In view of the standards approved for highways forming a part of the Interstate System, it seems obvious that the entire 41,000 miles of highways constituting this system will have many operating characteristics possessed by presently existing turnpikes such as the Pennsylvania Turnpike, the New Jersey Turnpike, and the New York Thruway.

Experience has shown that radio communication requirements necessary for the operation of specialized highways, such as turnpikes, are substantially different from the radiocommunication requirements necessary to the operation of the more ordinary type of highway. Since, as previously pointed out, the highways which will compose the Interstate System will have operating characteristics similar to many operating characteristics of turnpikes, it appears that many of the same radiocommunication problems will be encountered in the operation of these highways as are presently being encountered in the operation of turnpikes although on a larger scale due to the fact that the Interstate System would be much larger, mileage-wise, than are the presently existing turnpikes.

The proposed Interstate Highway System, if established, will allow all radiocommunications essential to all activities directly relating to operation of these specialized highways to be performed on frequencies specifically allocated for this use. The radiocommunication needs of the more ordinary types of public highways essential to maintenance thereof would continue to be met by stations licensed in the Highway Maintenance Radio Service and the radiocommunications needs of these ordinary highways essential to policing thereof would continue to be met by stations licensed in the Police Radio Service.

The frequencies which would be assignable to stations licensed in this service are composed of 24 in the 152-162 Mc band which would be assignable only to stations in this service; 3 narrow band-edge channels in the 152-162 Mc band which would be available for developmental operation on a shared basis with stations in other services within the Public Safety Radio Services; and 38 channels in the 450-460 Mc band which would also be available on a shared basis with other services within the Public Safety Radio Services.

Of the frequencies in the 152-162 Mc band that would be available only to stations in the Interstate Highway Service

8 are offset by 30 kc, and 16 by 15 kc from those presently assignable to stations in the Public Safety Radio Services.

The 3 narrow bands in the 152-162 Mc band and the 38 frequencies in the 450-460 Mc band are those previously described in paragraph 5 supra.

7. It is proposed to restrict the permissible communications in the Police, Fire, Forestry-Conservation, and Highway Maintenance Radio Services to those communications which are essential to official police, fire, forestry-conservation, and highway maintenance activities of the licensee, respectively. It is anticipated that this restriction will enhance the ability of licensees in these services to render the communication services for which they were originally designed. Any existing licensee in these services who desires to continue communications beyond the scope of those that would be permissible under this proposal would be eligible for licensing in the more general Local Government Radio Service wherein communications essential to any official activity of the licensee will be permitted.

8. In addition to proposing to limit permissible communications of licensees in all presently existing services, except those in the Special Emergency Radio Service, the Commission proposes to eliminate from frequencies assignable to licensees in these services all frequencies which are shared with licensees of other services on condition that no harmful interference is caused such other licensees. It is proposed to replace these frequencies in the following manner:

Add to the frequencies assignable to stations in all of the services within the Public Safety Radio Services, the frequencies 27.235, 27.245, 27.265, and 27.275 Mc on a shared basis with other services; 3 narrow band-edge channels in the 152-162 Mc band for developmental operation; and 18 frequencies in the 450-460 Mc band, which, together with 20 frequencies in this band now available for developmental operation, would be assignable on a regular basis;

Add to the frequencies assignable to stations in the Forestry-Conservation Radio Service 13 frequencies; to stations in the Highway Maintenance Radio Service 23 frequencies; and to stations in the Special Emergency Radio Service 12 frequencies in the 152-162 Mc band. All of these frequencies are among those obtained by reducing the separation between assignable frequencies in the manner prescribed by the Commission in Docket Number 11253.

9. In the 152-162 Mc band, frequencies offset by less than 15 kc from those listed as available for assignment to stations in a specific Public Safety Radio Service may be assigned on a developmental basis to stations in that service upon an adequate showing of need for such irregular assignment.

10. The frequencies, not previously assignable to stations in one or more of the services within the Public Safety Radio Services which would become assignable under the provisions of the proposed rules, are subject to varying conditions and limitations. The following summarization of these conditions and limitations is included for the convenience of

interested parties, but all parties are cautioned to consult the attached proposed rules for details of such conditions and limitations.

All frequencies in the 152-162 Mc band offset by 30 kc from those presently assignable to stations in the Public Safety Radio Services would become available for assignment subject to the coordination requirements set forth in § 10.8 on November 1, 1963. Earlier assignment would be allowed subject to the following conditions:

(1) The equipment proposed to be used meets the technical standards prescribed by the Commission in Docket Number 11253 for equipment in use on November 1, 1963; and

(2) Licensees located within a radius of 75 miles of the proposed station location which are authorized to operate on frequencies 30 kc or less removed concur with such earlier assignment, or in the alternative all such licensees are notified of the requested assignment and the application is accompanied by an acceptable engineering report indicating that no harmful interference will be caused existing stations.

All frequencies in the 152-162 Mc band offset by 15 kc from those presently assignable to stations in the Public Safety Radio Services would become available upon the effective date of the rules, set forth below, subject to the following conditions:

(1) The equipment proposed to be used meets the technical standards prescribed by the Commission in Docket Number 11253, for equipment in use on November 1, 1963; and

(2) Frequencies offset by 30 kc from those presently assignable to stations in the Public Safety Radio Services are all assigned for use in the area or the use of such frequencies at the proposed location is shown to be impractical; and

(3) The proposed station location is removed by at least 40 miles from the location of all other stations, except those of the applicant, which are authorized to operate on a frequency 30 kc or less removed; and

(4) All licensees of stations located within a radius of 75 miles of the proposed location which are authorized to operate on frequencies 30 kc or less removed, concur in such assignment, or in the alternative, all such licensees are notified of the requested assignment, and the application is accompanied by an engineering report indicating that no harmful interference will be caused to existing stations.

The frequencies in the 450-460 Mc band which would be made available to stations in the Public Safety Radio Services would become assignable when the proposed rules become effective subject only to the coordination procedure set forth in § 10.8.

The 3 narrow bands in the 152-162 Mc band which would be made available for developmental operation to stations in the involved services would be assignable on the effective date of the proposed rules subject to the following conditions:

(1) The band of frequencies occupied by the emission is, at all times, confined within the band listed; and

⁴ Geometric design standards for the National System of Interstate and Defense Highways, adopted by the American Association of State Highway Officials, July 12, 1956, and by the Bureau of Public Roads, Department of Commerce, July 17, 1956.

(2) The proposed station location is 40 miles or more from existing stations, other than those of the applicant authorized to operate on the same or adjacent channels; and

(3) The licensees of all stations located within a radius of 75 miles of the proposed location which are authorized to operate on the same or adjacent channels concur with the requested assignment, or in the alternative, all such licensees are notified and the application is accompanied by an engineering report indicating that harmful interference will not be caused existing stations.

The frequencies 27.235, 27.245, 27.255, 27.265, and 27.275 Mc would be available on a shared basis with other services and subject to interference from the operation of industrial, scientific and medical devices, provided the equipment meets the frequency stability requirements of the Commission's Rules, the band width of emission does not exceed 8 kc, and the power is limited to no more than 30 watts input to the final radio frequency stage.

11. The proposals contained in the rules set forth below, which envision assignment of frequencies above 890 Mc, are in accordance with present allocations. However, attention is called to a proceeding in Docket 11866, presently pending before the Commission, which involves the matter of frequency allocations above 890 Mc.

12. The American Municipal Association filed a petition dated January 3, 1957, requesting that Part 10 of the Commission's Rules be amended so as to establish a new service "for the use of local governments in their governmental function with the permissible transmissions to include any transmission necessary to the operation of the Local Government Agency and providing for the assignment of 20 channels in the 150 megacycle band and 20 channels in the 450 megacycle band."

The General Electric Company has also filed a petition requesting amendment of Part 10 of the Commission's Rules. This petition, dated February 15, 1957, seeks amendments so as to "allocate frequencies in the 152-162 Mc and 450-460 Mc bands for the purpose of controlling and coordinating public safety devices."

These petitions will be considered in any disposition of this proceeding and additional comments which the American Municipal Association and the General Electric Company may submit in accordance with the provisions of paragraphs 14 and 15 hereof will also be considered.

13. The proposed amendments, authority for which are contained in Sections 4 (i) and 303 of the Communications Act of 1934, as amended, are set forth below.

14. Any interested party who is of the opinion that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before June 10, 1957, a written statement or brief setting forth his comments. Comments in support of the proposed amendments may also be filed on or be-

fore the same date. Comments or briefs in reply to original comments may be filed within ten days from the last day for filing original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission; or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments that are submitted before taking action in these matters and, if any comments appear to warrant the holding of a hearing or oral argument, a notice of the time and place of such hearing or oral argument will be given.

15. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and fourteen copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: April 3, 1957.

Released: April 8, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,*

[SEAL] BEN F. WAPLE,
Acting Secretary.

It is proposed to amend Part 10 of the Commission's Rules Governing the Public Safety Radio Services in the following particulars:

1. Amend § 10.1 (b) to read as follows:

(b) This part is designed to provide a service of radio communication essential either to the discharge of non-Federal governmental functions or to the alleviation of an emergency endangering life or property.

2. Amend § 10.2 to read as follows:

§ 10.2 *Definitions.* For the purpose of this part the following definitions shall be applicable. (For other definitions, refer to Part 2 of this chapter.)

(a) *Definitions of services.*

Fire Radio Service. A public safety service of radio communication essential to official fire activities.

Fixed service. A service of radio communication between specified fixed points.

Forestry-Conservation Radio Service. A public safety service of radio communication essential to forestry-conservation activities.

Highway Maintenance Radio Service. A public safety service of radio communication essential to highway maintenance activities.

Interstate Highway Radio Service. A public safety service of radio communication essential to official activities involving maintenance, supervision, or operation of highways which meet the standards prescribed by the Secretary of Commerce of the United States for highways in the National System of Interstate and Defense Highways.

Local Government Radio Service. A service of radio communication essential to official activities of states, possessions, and territories, including counties, towns,

* Commissioners Hyde, Doerfer and Mack not participating. Concurring statement of Commissioner Bartley filed with the original document.

cities, and similar governmental subdivisions.

Mobile Service. A service of radio communication between mobile and land stations, or between mobile stations.

Police Radio Service. A public safety service of radio communication essential to official police activities.

Public Safety Radio Services. Any service of radio communication essential either to the discharge of non-Federal governmental functions or to the alleviation of an emergency endangering life or property, the radio transmitting facilities of which are defined as fixed, land, or mobile stations.

Radio service. An administrative subdivision of the field of radio communication. In an engineering sense the subdivisions may be made according to the method of operation; as for example, mobile service and fixed service. In a regulatory sense, the subdivisions may be descriptive of particular groups of licensees; as for example, the groups and subgroups of persons licensed under this part.

Special Emergency Radio Service. A public safety service of radio communication essential to the alleviation of an emergency endangering life or property.

State Guard Radio Service. A public safety service of radio communication essential to official activities of state guards or comparable organizations of states, territories, possessions, or the District of Columbia.

(b) *Definitions of stations.*

Base station. See "Land station."

Control station. An operational fixed station, the transmissions of which are used to control, automatically, the emissions or operation of another radio station at a specified location.

Fixed station. A station in the fixed service.

Fixed relay station. An operational fixed station established for the automatic retransmission of radio communications received from either one or more fixed stations or from a combination of fixed and mobile stations and directed to a specified location.

Interzone station. A fixed station in the Police Radio Service using radiotelegraphy (A1 emission) for communication with zone stations within the zone and with interzone stations in other zones.

Land station. A station in the mobile service not intended for operation while in motion. (Of the various types of land stations, only the base station is pertinent to this part and will be used interchangeably with land station.)

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Mobile relay station. A base station established for the automatic retransmission of mobile service communications which originate on the transmitting frequency of the mobile stations and which are retransmitted on the receiving frequency of the mobile stations.

Operational fixed station. A fixed station, not open to public correspondence, operated by and for the sole use of those agencies operating their own radio com-

munication facilities in the Public Safety, Industrial, Land Transportation, Marine, or Aviation Services.

Repeater station. An operational fixed station established for the automatic retransmission of radio communications received from one or more mobile stations and directed to a specified location.

Zone station. A fixed station in the Police Radio Service using radiotelegraphy (A1 emission) for communication with other similar stations in the same zone and with an interzone station.

(c) **Miscellaneous definitions.**

Antenna structures. The term "antenna structure" includes the radiating system, its supporting structures, and any surmounting appurtenances.

Assigned frequency. The frequency appearing on a station authorization from which the carrier frequency may deviate by an amount not to exceed that permitted by the frequency tolerance.

Authorized bandwidth. The maximum width of the band of frequencies, as specified in the authorization, to be occupied by an emission.

Bandwidth occupied by an emission. The width of the frequency band (normally specified in kilocycles) containing those frequencies upon which a total of 99 per cent of the radiated power appears, extended to include any discrete frequency upon which the power is at least 0.25 per cent of the total radiated power.

Carrier frequency. The frequency of the carrier.

Harmful interference. Any radiation or any induction which endangers the functioning of a radionavigation service or of a safety service or obstructs or repeatedly interrupts a radio service operating in accordance with applicable laws, treaties and regulations. (For purposes of this definition only, a safety service is any radio service, operation of which is directly related, whether permanently or temporarily, to the safety of human life and the safeguarding of property.)

Landing area. A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use, for the landing and take-off of aircraft whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

Station authorization. Any construction permit, license, or special temporary authorization issued by the Commission.

3. Amend § 10.3 to read as follows:

§ 10.3 **Organization and applicability of rules.** The rules in this part are divided into 13 subparts of which Subparts A through E, inclusive, contain rules of a general nature which apply to every station authorized under this part. Subparts F through M, inclusive, are specific and apply only to the stations authorized under the particular subpart.

4. Amend § 10.8 (b) to read as follows:

(b) (1) A statement under oath that all existing licensees in the Public Safety Radio Services located within a radius of 75 miles of the proposed station and

operating on frequencies 30 kc or less removed from the frequency proposed to be used by the applicant have been notified of the applicant's intention to request the particular frequency; and

(2) A report based on a field study covering the area within a radius of 75 miles of the proposed station location indicating the probable interference which will result to existing stations authorized to operate in the Public Safety Radio Services on frequencies 30 kc or less removed from the frequency which the applicant proposes to use.

5. Add a new § 10.9 to read as follows:

§ 10.9 **Civil Defense.** A station licensed under this part may transmit communications necessary for the implementation of civil defense activities assigned such station by the local civil defense authorities during an actual or simulated emergency, including drills and tests; *Provided*, That such communications relate to the activity or activities which form the basis of the licensee's eligibility in the radio service in which authorized.

6. Amend § 10.101 by:

a. Amending paragraph (a) to read as follows:

§ 10.101 **Frequencies.** (a) Frequencies other than those shown in the applicable subpart of this part are not available for assignment except as provided in paragraphs (b), (d), and (f) of this section, and except that licensees holding a valid authorization on (rules effective date) may, upon proper application, continue to be authorized for such operation, including expansion of existing systems, until October 31, 1963. All applicants for, and licensees of, stations in the services in this part shall cooperate in the selection and use of the designated frequencies to minimize interference and to make effective use of the frequencies assigned. Frequencies listed in this part will not be assigned exclusively to any one applicant. The use of any frequency at a given geographical location may be denied when in the judgment of the Commission its use in that location is not in the public interest; the use of any frequency may be restricted to one or more geographical areas.

b. Amending paragraph (d) to read as follows:

(d) The frequencies 27.235, 27.245, 27.255, 27.265, and 27.275 Mc may be authorized to any eligible applicant in the Public Safety Radio Services subject to the following conditions and limitations:

(1) Notwithstanding the rule provisions relating to permissible communications, points of communication and emissions in the applicable subpart of this part, the frequencies 27.235, 27.245, 27.255, 27.265, and 27.275 Mc may be used to accomplish any radio communication requirement which is necessary to the licensee's activity; *Provided*, That all operations are otherwise in accordance with the rules in this chapter; that the bandwidth of emission does not exceed 8 kc; and that power is limited to no more than

30 watts input to the final radio frequency stage.

(2) The frequencies 27.235, 27.245, 27.255, 27.265, and 27.275 Mc are available for assignment in the Public Safety Radio Services for use on a shared basis with stations in other services. All fixed and mobile operations on these frequencies are subject to interference from the operation of industrial, scientific, and medical devices on the frequency 27.12 Mc.

c. Amending paragraph (f) to read as follows:

(f) The frequency bands 153.7325 to 153.7475, 154.4525 to 154.460, and 159.4725 to 159.480 Mc may be authorized for developmental operation to any eligible applicant in the Public Safety Radio Services for narrow band systems only: *Provided*, That

(1) The band of frequencies occupied by the emission is at all times confined within the band listed;

(2) The proposed station location is removed by at least 40 miles from the station location of each other station authorized to other than the applicant on the same or adjacent channels, at the time application is made; and

(3) The application is accompanied by a statement, under oath, that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on the same or adjacent channels have concurred with such assignment, or is accompanied by a report based on a field study which indicates the probable interference to the operation of existing stations, together with a statement, under oath, that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on the same or adjacent channels have been notified of applicant's intention to request the assignment.

7. Amend § 10.252 to read as follows:

§ 10.252 **Permissible communications.** Stations in the Police Radio Service are authorized to transmit communications essential to official police activities of the licensee.

8. Amend § 10.253 (a) and (b) to read as follows:

§ 10.253 **Points of communications.** (a) Police base stations are authorized to intercommunicate with police mobile stations. Police mobile stations are authorized to intercommunicate with police base stations and other police mobile stations.

(b) Police base and mobile stations are also authorized to intercommunicate with other stations in the Public Safety Radio Services and to transmit to receivers at fixed locations; *Provided*, That no harmful interference will be caused to the base-mobile operations of any authorized station.

9. Amend § 10.255 (g) by:

a. Deleting the frequency band 159.51 to 161.79 Mc and the frequencies 156.27 Mc through 156.75 Mc from the tabulation of frequencies; and

b. Amending the tabulation of frequencies 453.05 Mc through 458.95 Mc.

c. As amended, the table from 156.210 through 458.950 Mc reads as follows:

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
156.210	Base and mobile	
158.730	do	
158.790	do	
158.850	do	
158.910	Mobile	
158.970	do	
159.030	do	
159.090	Base and mobile	
159.150	do	
159.210	do	
453.050	do	
453.100	do	
453.150	do	
453.200	do	
453.250	do	
453.300	do	
453.350	do	
453.400	do	
453.450	do	
453.500	do	
453.550	do	
453.600	do	
453.650	do	
453.700	do	
453.750	do	
453.800	do	
453.850	do	
453.900	do	
453.950	do	
458.050	Mobile	
458.100	do	
458.150	do	
458.200	do	
458.250	do	
458.300	do	
458.350	do	
458.400	do	
458.450	do	
458.500	do	
458.550	do	
458.600	do	
458.650	do	
458.700	do	
458.750	do	
458.800	do	
458.850	do	
458.900	do	
458.950	do	

10. Amend § 10.255 (h) by:

a. Deleting the text of subparagraphs (4) and (5) and inserting the word "[Reserved]".

11. Amend § 10.302 to read as follows:

§ 10.302 *Permissible communications.* Stations in the Fire Radio Service are authorized to transmit communications essential to official fire activities of the licensee.

12. Amend § 10.303 (a) and (b); as amended, § 10.303 reads as follows:

§ 10.303 *Points of communication.* (a) Fire base stations are authorized to intercommunicate with fire mobile stations. Fire mobile stations are authorized to intercommunicate with fire base stations and other fire mobile stations.

(b) Fire base and mobile stations are also authorized to intercommunicate with other stations in the Public Safety Radio Services and to transmit to receivers at fixed locations: *Provided*, That no harmful interference will be caused to the base-mobile operations of any authorized station.

(c) Fire fixed stations are authorized to intercommunicate with other fixed stations in the Public Safety Radio Services and to transmit to receivers at fixed locations.

13. Amend § 10.305 (f) by:

a. Deleting the frequency band 159.51 Mc to 161.79 Mc from the tabulation of frequencies; and

b. Amending the tabulation of frequencies 453.05 Mc through 458.95 Mc.

c. As amended, the table from 153.89 Mc through 458.95 Mc reads as follows:

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
153.890	Mobile	
153.950	do	
154.010	do	
154.070	do	8.
154.130	Base and mobile	8.
154.190	do	8.
154.250	do	8.
154.310	do	8.
154.370	do	8.
154.430	do	8.
166.250	do	5.
170.150	do	5.
453.050	do	
453.100	do	
453.150	do	
453.200	do	
453.250	do	
453.300	do	
453.350	do	
453.400	do	
453.450	do	
453.500	do	
453.550	do	
453.600	do	
453.650	do	
453.700	do	
453.750	do	
453.800	do	
453.850	do	
453.900	do	
453.950	do	
458.050	do	
458.100	do	
458.150	do	
458.200	do	
458.250	do	
458.300	do	
458.350	do	
458.400	do	
458.450	do	
458.500	do	
458.550	do	
458.600	do	
458.650	do	
458.700	do	
458.750	do	
458.800	do	
458.850	do	
458.900	do	
458.950	do	

14. Amend § 10.305 (g) by deleting the text of subparagraph (4) and inserting the word "[Reserved]".

15. Amend § 10.352 to read as follows:

§ 10.352 *Permissible communications.* Stations in the Forestry-Conservation Radio Service are authorized to transmit communications essential to official forestry-conservation activities of the licensee.

16. Amend § 10.353 (a) and (b) to read as follows:

(a) Forestry-conservation base stations are authorized to intercommunicate with forestry-conservation mobile stations. Forestry-conservation mobile stations are authorized to intercommunicate with forestry-conservation base stations and other forestry-conservation mobile stations.

(b) Forestry-conservation base and mobile stations are also authorized to intercommunicate with other stations in the Public Safety Radio Services and to transmit to receivers at fixed locations provided that no harmful interference will be caused to the base-mobile operations of any authorized station.

17. Amend § 10.355 (d) to read as follows:

(d) The following tabulation indicates the frequency or bands of frequencies,

the class of stations to which they are normally available, and the specific assignment limitations, which are developed in paragraph (e) of this section:

Frequency or band	Class of station(s)	Limitations
<i>Kilocycles</i>		
2212	Base and mobile	6, 12.
2226	do	6, 12.
2236	do	6, 12.
2244	do	6, 12.
<i>Megacycles</i>		
30.85	do	11.
30.90	do	11.
30.94	do	11.
30.98	do	11.
31.02	do	11.
31.06	do	7, 9, 10, 11.
31.10	do	7, 9, 10, 11.
31.14	do	7, 9, 10, 11.
31.18	do	7, 9, 10.
31.22	do	7, 9, 10.
31.26	do	7, 9, 10.
31.30	do	7, 9, 10.
31.34	do	7, 9, 10.
31.38	do	7, 9, 10.
31.42	do	7, 9, 10.
31.46	do	7, 9, 10.
31.50	do	7, 9, 10.
31.54	do	7, 9, 10.
31.58	do	7, 9, 10.
31.62	do	7, 9, 10.
31.66	do	7, 9, 10.
31.70	do	7, 9, 10.
31.74	do	7, 9, 10.
31.78	do	7, 9, 10.
31.82	do	7, 9, 10.
31.86	do	7, 9, 10.
31.90	do	7, 9, 10.
31.94	do	7, 9, 10.
31.98	do	7, 9, 10.
46.54	do	
46.58	do	
46.62	do	
46.66	do	
46.70	do	
46.74	do	
46.78	do	
46.82	do	
72.02 to 74.58	Operational fixed	3.
75.42 to 75.98	do	3.
159.225	Base and mobile	17.
159.240	do	16.
159.255	do	17.
159.270	do	
159.285	do	17.
159.300	do	16.
159.315	do	17.
159.330	do	
159.345	do	17.
159.360	do	16.
159.375	do	17.
159.390	do	
159.405	do	17.
159.420	do	16.
159.435	do	17.
159.450	do	
159.465	do	17.
170.425	do	8, 10, 14.
170.475	do	8, 10, 13.
170.575	do	8, 10, 14.
171.425	do	8, 10, 13.
171.475	do	10, 14, 15.
171.675	do	8, 10, 13.
172.225	do	8, 10, 14.
172.275	do	10, 13, 15.
172.375	do	8, 10, 14.
453.050	do	
453.100	do	
453.150	do	
453.200	do	
453.250	do	
453.300	do	
453.350	do	
453.400	do	
453.450	do	
453.500	do	
453.550	do	
453.600	do	
453.650	do	
453.700	do	
453.750	do	
453.800	do	
453.850	do	
453.900	do	
453.950	do	
458.050	Mobile	
458.100	do	
458.150	do	
458.200	do	
458.250	do	
458.300	do	
458.350	do	
458.400	do	
458.450	do	
458.500	do	
458.550	do	

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
458,600	Mobile	
458,650	do	
458,700	do	
458,750	do	
458,800	do	
458,850	do	
458,900	do	
458,950	do	
890 to 940	Operational fixed	1, 2
952 to 960	do	1
1850 to 1990	do	1
2110 to 2200	do	1
2450 to 2500	Base and mobile and operational fixed	1, 2
2500 to 2700	Operational fixed	1
3500 to 3700	Base and mobile	1
6425 to 6575	do	1
6575 to 6875	Operational fixed	1
11700 to 12200	Base and mobile	1
12200 to 12700	Operational fixed	1
16000 to 18000	do	1, 2
26000 to 30000	do	1

18. Amend § 10.355 (e) by deleting the text of subparagraphs (4) and (5) and inserting the word "[Reserved]"; and adding subparagraphs (16) and (17) to read as follows:

(16) Available for assignment on and after November 1, 1963. An earlier assignment may be made: *Provided*, That equipment proposed to be used meets the technical standards set forth in Subpart C of this part applicable to equipment in use on and after November 1, 1963, when:

(i) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on a frequency 30 kc or less removed have concurred with such earlier assignment; or

(ii) The applicant submits an acceptable engineering report indicating that harmful interference to the operation of existing stations will not be caused, together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on a frequency 30 kc or less removed have been notified of applicant's intention to request the assignment.

(17) Available for assignment: *Provided*, That:

(i) The equipment proposed to be used meets the technical standards, set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963; and

(ii) Listed frequencies 15 kc removed are presently assigned for use in the same area or the use of such frequencies is shown to be impractical at the location proposed; and

(iii) The proposed station location is removed by at least 40 miles from the station location of each other station, except those of the applicant, authorized to operate on frequencies 30 kc or less removed; and

(iv) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on a frequency 30 kc or less removed have concurred with such assignment or is accompanied by an acceptable engineering report indicating that harmful interference to the opera-

tion of existing stations will not be caused, together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

19. Amend § 10.355 by adding new paragraphs (f) and (g) to read as follows:

(f) Frequencies offset by less than 15 kc from those frequencies in the 152-162 Mc band listed in paragraph (d) of this section may be assigned for developmental operation upon an adequate showing of need for such irregular assignment together with a comprehensive engineering report indicating that harmful interference to the operation of other stations will not be caused thereby.

(g) The frequencies shown in paragraph (d) of this section as being available for assignment to mobile stations only may be authorized for use by base stations only after coordination with affected licensees in the area and subject to the condition that no harmful interference will be caused to the service of any mobile station using the particular frequency. Evidence of the required coordination shall be submitted with any request for such use.

20. Amend § 10.402 to read as follows:

§ 10.402 *Permissible communications.* Stations in the Highway Maintenance Radio Service are authorized to transmit communications essential to official activities of the licensee directly relating to the physical maintenance of public highways.

21. Amend § 10.403 (a) and (b); as amended, § 10.403 reads as follows:

§ 10.403 *Points of communication.* (a) Highway maintenance base stations are authorized to intercommunicate with highway maintenance mobile stations. Highway maintenance mobile stations are authorized to intercommunicate with highway maintenance base stations and other highway maintenance mobile stations.

(b) Highway maintenance base and mobile stations are also authorized to intercommunicate with other stations in the Public Safety Radio Services and to transmit to receivers at fixed locations: *Provided*, That no harmful interference will be caused to the base-mobile operations of any authorized station.

(c) Highway maintenance fixed stations are authorized to intercommunicate with other fixed stations in the Public Safety Radio Services and to transmit to receivers at fixed locations.

22. Amend § 10.404 (b) to read as follows:

(b) Subject to the provisions of § 10.154, communication units of a licensed highway maintenance mobile station may be installed in vehicles of contractors or other persons having a direct responsibility for maintenance of public highways.

23. Amend § 10.405 (e) to read as follows:

(e) The following tabulation indicates the frequency or bands of frequencies, the class of station(s) to which they are normally available, and the specific assignment limitations, which are developed in paragraph (f) of this section:

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
33.02	Base and mobile	6
33.06	do	6
33.10	do	6
37.90	do	6
37.94	do	6
37.98	do	6
46.86	do	7, 8
46.90	do	7, 8
46.94	do	7, 8
46.98	do	7, 8
47.02	do	7, 8
47.06	do	7, 8
47.10	do	7, 8
47.14	do	7, 8
47.18	do	7, 8
47.22	do	7, 8
47.26	do	7, 8
47.30	do	7, 8
47.34	do	7, 8
47.38	do	7, 8
72.02 to 74.58	Operational fixed	3
75.42 to 75.98	do	3
155.805	Base and mobile	11
155.820	do	10
155.835	do	11
155.850	do	11
155.865	do	11
155.880	do	11
155.895	do	11
155.910	do	11
155.925	do	11
155.940	Mobile	11
155.955	do	10
155.970	do	11
155.985	do	11
156.000	do	10
156.015	do	11
156.045	do	11
156.060	do	10
156.075	do	11
156.105	do	11
156.120	do	10
156.135	do	11
156.165	Base and mobile	11
156.180	do	10
156.195	do	11
156.225	do	11
156.240	do	10
453.050	do	
453.100	do	
453.150	do	
453.200	do	
453.250	do	
453.300	do	
453.350	do	
453.400	do	
453.450	do	
453.500	do	
453.550	do	
453.600	do	
453.650	do	
453.700	do	
453.750	do	
453.800	do	
453.850	do	
453.900	do	
453.950	do	
458.050	Mobile	
458.100	do	
458.150	do	
458.200	do	
458.250	do	
458.300	do	
458.350	do	
458.400	do	
458.450	do	
458.500	do	
458.550	do	
458.600	do	
458.650	do	
458.700	do	
458.750	do	
458.800	do	
458.850	do	
458.900	do	
458.950	do	
890 to 940	Operational fixed	1, 2
952 to 960	do	1
1850 to 1990	do	1
2110 to 2200	do	1
2450 to 2500	Base and mobile and operational fixed	1, 2
2500 to 2700	Operational fixed	1
3500 to 3700	Base and mobile	1
6425 to 6575	do	1
6575 to 6875	Operational fixed	1
11700 to 12200	Base and mobile	1
12200 to 12700	Operational fixed	1
16000 to 18000	do	1, 2
26000 to 30000	do	1

24. Amend § 10.405 (f) by:

a. Deleting the text of subparagraphs (4), (5), and (9) and inserting the word "[Reserved]"; and by adding subparagraphs (10) and (11) to read as follows:

(10) Available for assignment on and after November 1, 1963. An earlier assignment may be made: *Provided*, That equipment proposed to be used meets the technical standards, set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963, when:

(i) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed have concurred with such earlier assignments, or

(ii) The applicant submits an acceptable engineering report indicating that no harmful interference to operation of existing stations, together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

(11) Available for assignment: *Provided*, That:

(i) The equipment proposed to be used meets the technical standards, set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963; and

(ii) Listed frequencies 15 kc or less removed are presently assigned for use in the same area or the use of such frequencies is shown to be impractical at the location proposed; and

(iii) The proposed station location is removed by at least 40 miles from the station location of each other station, except those of the applicant, to operate on frequencies 30 kc or less removed; and

(iv) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on a frequency 30 kc or less removed have concurred with such assignment or is accompanied by an acceptable engineering report indicating that harmful interference to the operation of existing stations will not be caused, together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed, have been notified of applicant's intention to request the assignment.

25. Amend § 10.405 by adding new paragraphs (g) and (h) to read as follows:

(g) Frequencies offset by less than 15 kc from those frequencies in the 152-162 Mc band listed in paragraph (e) of this section may be assigned for developmental operation upon an adequate showing of need for such an irregular assignment together with a comprehensive engineering report indicating that harmful interference to operation of other stations will not be caused thereby.

(h) The frequencies shown in paragraph (e) of this section as being avail-

able for assignment to mobile stations only may be authorized for use by base stations only after coordination with affected licensees in the area and subject to the condition that no harmful interference will be caused to the service of any mobile station using the particular frequency. Evidence of the required coordination shall be submitted with any request for such use.

26. Amend § 10.462 by:

a. Amending paragraph (c) to read as follows:

(c) The operation of mobile systems in the Special Emergency Radio Service will be restricted to the use of only one frequency: *Provided*, That an additional frequency may be authorized when mobile relay stations are authorized pursuant to paragraph (i) of this section.

b. Amending paragraph (e) to read as follows:

(e) The following tabulation indicates the frequency or bands of frequencies, the class of station(s) to which they are normally available, and the specific assignment limitations which are developed in paragraph (f) of this section:

Frequency or band	Class of station(s)	Limitations
Kilocycles		
2000 to 3000.....	Fixed.....	9.
2726.....	Base and mobile.....	10.
3201.....	do.....	
Megacycles		
33.02.....	do.....	6.
33.06.....	do.....	6.
33.10.....	do.....	6.
37.90.....	do.....	6.
37.94.....	do.....	6.
37.98.....	do.....	6.
47.42.....	do.....	7.
47.46.....	do.....	
47.50.....	do.....	
47.54.....	do.....	
47.58.....	do.....	
47.62.....	do.....	
47.66.....	do.....	
72.02 to 74.58.....	Operational fixed.....	3.
75.42 to 75.98.....	do.....	3.
155.565.....	Base and mobile.....	12.
155.580.....	do.....	12.
155.595.....	do.....	12.
155.625.....	do.....	12.
155.640.....	do.....	12.
155.655.....	do.....	12.
155.685.....	do.....	12.
155.700.....	do.....	12.
155.715.....	do.....	12.
155.745.....	do.....	12.
155.760.....	do.....	12.
155.775.....	do.....	12.
453.050.....	do.....	12.
453.100.....	do.....	
453.150.....	do.....	
453.200.....	do.....	
453.250.....	do.....	
453.300.....	do.....	
453.350.....	do.....	
453.400.....	do.....	
453.450.....	do.....	
453.500.....	do.....	
453.550.....	do.....	
453.600.....	do.....	
453.650.....	do.....	
453.700.....	do.....	
453.750.....	do.....	
453.800.....	do.....	
453.850.....	do.....	
453.900.....	do.....	
453.950.....	do.....	
458.050.....	Mobile.....	
458.100.....	do.....	
458.150.....	do.....	
458.200.....	do.....	
458.250.....	do.....	
458.300.....	do.....	
458.350.....	do.....	
458.400.....	do.....	
458.450.....	do.....	
458.500.....	do.....	
458.550.....	do.....	
458.600.....	do.....	

Frequency or band	Class of station(s)	Limitations
Megacycles		
458.650.....	Mobile.....	
458.700.....	do.....	
458.750.....	do.....	
458.800.....	do.....	
458.850.....	do.....	
458.900.....	do.....	
458.950.....	do.....	
890 to 940.....	Operational fixed.....	1, 2.
952 to 960.....	do.....	1.
1850 to 1900.....	do.....	1.
2110 to 2200.....	do.....	1.
2450 to 2500.....	Base and mobile and operational fixed.....	1, 2.
2500 to 2700.....	Operational fixed.....	1.
3500 to 3700.....	Base and mobile.....	1.
6425 to 6575.....	do.....	1.
6575 to 6875.....	Operational fixed.....	1.
11700 to 12200.....	Base and mobile.....	1.
12200 to 12700.....	Operational fixed.....	1.
16000 to 18000.....	do.....	1, 2.
26000 to 30000.....	do.....	1.

c. Amending paragraph (f) by deleting the text of subparagraphs (4), (5), and (8) and inserting the word "[Reserved]"; and amending subparagraphs (11) and (12) to read as follows:

(11) Available for assignment on and after November 1, 1963. An earlier assignment may be made: *Provided*, That equipment proposed to be used meets the technical standards set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963, when:

(i) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location authorized to operate on frequencies 30 kc or less removed have concurred with such earlier assignment; or

(ii) The applicant submits an acceptable engineering report indicating that no harmful interference to the operation of existing stations, together with a statement under oath, that the licensees of all stations located within a radius of 75 miles of the proposed location authorized to operate on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

(12) Available for assignment: *Provided*, That:

(i) The equipment proposed to be used meets the technical standards, set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963; and

(ii) Listed frequencies 15 kc or less removed are presently assigned for use in the same area or the use of such frequencies is shown to be impracticable at the location proposed; and

(iii) The proposed station location or area of operation is removed by at least 40 miles from the station location of each other station, except those of the applicant, authorized to operate on frequencies 30 kc or less removed; and

(iv) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed station authorized to operate on frequencies 30 kc or less removed have concurred with such assignment or is accompanied by an acceptable engineering report indicating that harmful interference to the operation of existing stations will not be

caused, together with a statement under oath, that the licensees of all stations located within a radius of 75 miles of the proposed location authorized to operate on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

d. Adding new paragraphs (g), (h), and (i) to read as follows:

(g) Frequencies offset by less than 15 kc from those frequencies in the 152-162 Mc band listed in paragraph (e) of this section may be assigned for developmental operation upon an adequate showing of need for such irregular assignment together with a comprehensive engineering report indicating that harmful interference to the operation of other stations will not be caused thereby.

(h) The frequencies shown in paragraph (e) of this section as being available for assignment to mobile stations only may be authorized for use by base stations only after coordination with affected licensees in the area and subject to the condition that no harmful interference will be caused to the service of any mobile station using the particular frequency. Evidence of the required coordination shall be submitted with any request for such use.

(i) Mobile relay stations in the Special Emergency Radio Service only on frequencies above 453.00 Mc and only where:

(1) a special emergency radio system cannot function satisfactorily without communication between mobile units over a distance in excess of that which can be obtained by direct car-to-car communication; or

(2) an integrated system of radio communication is desirable between two or more licensees in the special emergency radio service and where, by use of a mobile relay station, the integrated system results in an actual reduction in the number of frequencies required in the area as compared to the number of frequencies which would be required if the same number of licensees operate separate systems.

27. Add a new Subpart L to read as follows:

SUBPART L—LOCAL GOVERNMENT RADIO SERVICE

Sec.

- 10.551 Eligibility.
10.552 Permissible communications.
10.553 Points of communication.
10.554 Station limitations.
10.555 Frequencies available to the Local Government Service.

SUBPART L—LOCAL GOVERNMENT RADIO SERVICE

§ 10.551 *Eligibility.* Authorizations for stations in the Local Government Radio Service will be issued only to territories, possessions, states, other governmental subdivisions including counties, cities, towns, and similar governmental entities.

§ 10.552 *Permissible communications.* Stations in the Local Government Radio Service are authorized to transmit two-way voice communications essential to official activities of the licensee.

§ 10.553 *Points of communication.*

(a) Local government base stations are authorized to intercommunicate with local government mobile stations. Local government mobile stations are authorized to intercommunicate with local government base stations and other local government mobile stations.

(b) Local government fixed stations are authorized to intercommunicate with other fixed stations in the Public Safety Radio Services and to transmit to receivers at fixed locations.

§ 10.554 *Station limitations.* Mobile relay stations in the Local Government Radio Service will be authorized only where a showing of need can be made in accordance with either of the following conditions:

(a) Where a local government radio system cannot function satisfactorily without communication between mobile units over a distance in excess of that which can be effected by direct car-to-car communication.

(b) Where an integrated system of radio communication is desirable between two or more Local Government Radio Service licensees and where by the use of a mobile relay station, the integrated system provides an actual reduction in the number of frequencies which would be needed in the area if the same number of licensees operate separate systems.

§ 10.555 *Frequencies available to the Local Government Radio Service.* (a) The frequencies or bands of frequencies listed herein are available for assignment to stations in the Local Government Radio Service subject to the conditions and limitations of this section.

(b) The frequencies shown in paragraph (f) of this section as being available for assignment to mobile stations only may be authorized for use by base stations only after coordination with affected licensees in the area and subject to the condition that no harmful interference will be caused to the service of any mobile station using the particular frequency. Evidence of the required coordination shall be submitted with any request for such use.

(c) The amount of separation between assignable frequencies listed in paragraph (f) of this section does not necessarily indicate the amount of frequency separation required for systems operation; accordingly, grants of adjacent channel assignments in all bands shall be in the discretion of the Commission.

(d) Normally no more than two frequencies will be assigned unless a request therefor is adequately supported by a satisfactory showing of need.

(e) Control and repeater stations in the Local Government Radio Service will be authorized only of frequencies allocated to operational fixed stations.

(f) The following tabulation indicates the frequencies or bands of frequencies, class of stations to which they are normally available, and the specific assignment limitations, which are developed in paragraph (g) of this section:

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
72.02 to 74.58	Operational fixed	3.
75.42 to 75.98	do	3.
153.755	Mobile	5, 6.
153.785	do	5, 6.
153.800	do	4, 6.
153.815	do	5, 6.
153.845	do	5, 6.
153.890	do	4, 6.
153.875	do	5, 6.
153.905	do	5, 6.
153.920	do	4, 6.
153.935	do	5, 6.
153.965	do	5, 6.
153.980	do	4, 6.
153.995	do	5, 6.
154.025	do	5, 6.
154.040	do	4, 6.
154.055	do	5, 6.
154.085	do	4, 6.
154.100	do	5, 6.
154.115	do	5, 6.
154.145	Base and mobile	5, 6.
154.160	do	4, 6.
154.175	do	5, 6.
154.205	do	5, 6.
154.220	do	4, 6.
154.235	do	5, 6.
154.265	do	5, 6.
154.280	do	4, 6.
154.295	do	5, 6.
154.325	do	5.
154.340	do	4.
154.355	do	5.
154.385	do	5.
154.400	do	4.
154.415	do	5.
154.445	do	5.
154.635	Mobile	5, 6.
154.665	do	5, 6.
154.680	do	4, 6.
154.695	do	5, 6.
154.725	do	5, 6.
154.740	do	4, 6.
154.755	do	5, 6.
154.785	do	5, 6.
154.800	do	4, 6.
154.810	do	5, 6.
154.845	do	5, 6.
154.860	do	4, 6.
154.875	do	5, 6.
154.905	do	5, 6.
154.920	do	4, 6.
154.935	do	5, 6.
154.965	do	5, 6.
154.980	do	4, 6.
154.995	do	5, 6.
155.025	Base and mobile	5, 6.
155.040	do	4, 6.
155.055	do	5, 6.
155.085	do	5, 6.
155.100	do	4, 6.
155.115	do	5, 6.
155.145	do	5, 6.
155.160	do	4, 6.
155.175	do	5, 6.
155.205	do	5, 6.
155.220	do	4, 6.
155.235	do	5, 6.
155.265	do	5.
155.280	do	4.
155.295	do	5.
155.325	do	5.
155.340	do	4.
155.355	do	5.
155.385	do	5.
155.400	do	4.
155.415	do	5.
155.445	do	5.
155.460	do	4.
155.475	do	5.
155.505	do	5.
155.520	do	4.
155.535	do	5.
453.050	do	5.
453.100	do	5.
453.150	do	5.
453.200	do	5.
453.250	do	5.
453.300	do	5.
453.350	do	5.
453.400	do	5.
453.450	do	5.
453.500	do	5.
453.550	do	5.
453.600	do	5.
453.650	do	5.
453.700	do	5.
453.750	do	5.
453.800	do	5.
453.850	do	5.
453.900	do	5.
453.950	do	5.
458.050	Mobile	5.
458.100	do	5.
458.150	do	5.

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
458.200	Mobile	
458.250	do	
458.300	do	
458.350	do	
458.400	do	
458.450	do	
458.500	do	
458.550	do	
458.600	do	
458.650	do	
458.700	do	
458.750	do	
458.800	do	
458.850	do	
458.900	do	
458.950	do	
890 to 940	Operational fixed	1, 2.
952 to 960	do	1.
1850 to 1990	do	1.
2110 to 2200	do	1.
2450 to 2500	Base and mobile and operational fixed	1, 2.
2500 to 2700	Operational fixed	1.
3500 to 3700	Base and mobile	1.
6425 to 6575	do	1.
6575 to 6875	Operational fixed	1.
11700 to 12300	Base and mobile	1.
12300 to 12700	Operational fixed	1.
16000 to 18000	do	1, 2.
26000 to 30000	do	1.

(g) Explanation of assignment limitations appearing in the frequency tabulation of paragraph (f) of this section:

(1) Limited to the developmental operation only with the assigned frequency and particulars of operation specified in each authorization.

(2) Subject to no protection from interference due to the operation of industrial, scientific and medical devices in this band.

(3) Assignable frequencies spaced by 40 kc beginning with the frequencies 72.02 and 75.42 Mc and ending with the frequencies 74.58 and 75.98 Mc, respectively, are available on a shared basis with other services only in accordance with the provisions of § 10.101 (c).

(4) Available for assignment on and after November 1, 1963. An earlier assignment may be made, provided the equipment proposed to be used meets the technical standards, set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963, when:

(i) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed have concurred with such earlier assignment; or

(ii) The applicant submits an acceptable engineering report indicating that harmful interference will not be caused to the operation of existing stations together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

(5) Available for assignment: *Provided, That*

(i) The equipment proposed to be used meets the technical standards, set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963.

(ii) Listed frequencies 15 kc or less removed are presently assigned for use in

the same area or the use of such frequencies is shown to be impracticable at the location proposed; and

(iii) The proposed station location is removed by at least 40 miles from the station location of each other station, other than those of the applicant, authorized on frequencies 30 kc or less removed at the time application is made; and

(iv) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed station and authorized to operate on frequencies 30 kc or less removed have concurred with such assignment or is accompanied by an acceptable engineering report indicating that harmful interference will not be caused to the operation of existing stations together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location authorized to operate on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

(6) The power which may be used for operation on these frequencies may not exceed 180 watts plate power input to the final radio frequency stage and the antenna height may not exceed 50 feet above ground level at the antenna location. In addition, operation on these frequencies is subject to the provisions of § 10.106.

(h) Frequencies offset by less than 15 kc from those frequencies listed in the 152-162 Mc band may be assigned for developmental operation upon an adequate showing of the need for such irregular assignment together with a comprehensive engineering report indicating that excessive interference to the operation of other stations will not be caused thereby.

28. Add a new Subpart M to read as follows:

SUBPART M—INTERSTATE HIGHWAY RADIO SERVICE

- Sec.
10.601 Eligibility.
10.602 Permissible communications.
10.603 Points of communication.
10.604 Station limitations.
10.605 Frequencies available to the Interstate Highway Radio Service.

SUBPART M—INTERSTATE HIGHWAY RADIO SERVICE

§ 10.601 *Eligibility.* (a) Authorizations for stations in the Interstate Highway Radio Service will be issued only to territories, possessions, states, and other governmental subdivisions including counties, cities, towns, and similar governmental entities charged with responsibility for maintenance, supervision or operation of highways which meet the standards prescribed, pursuant to the Federal-Aid Highway Act of 1956 (Public Law 627, 84th Cong., 2d Sess.), by the Secretary of Commerce of the United States for highways forming a part of the National System of Interstate and Defense Highways.

(b) The initial application requesting a station authorization pursuant to the provisions of this subpart shall be accompanied by a statement in sufficient detail to permit a ready determination

of the applicant's eligibility as defined in paragraph (a) of this section.

§ 10.602 *Permissible communications.* Stations in the Interstate Highway Radio Service are authorized to transmit communications essential to the maintenance, supervision, or operation of highways which meet the standards prescribed, pursuant to the Federal Aid Highway Act of 1956 (Public Law 627, 84th Cong., 2d Sess.), by the Secretary of Commerce of the United States for highways forming a part of the National System of Interstate and Defense Highways.

§ 10.603 *Points of communication.* (a) Interstate highway base stations are authorized to intercommunicate with interstate highway mobile stations. Interstate highway mobile stations are authorized to intercommunicate with interstate highway base stations and other interstate highway mobile stations.

(b) Interstate highway base and mobile stations are also authorized to intercommunicate with other stations in the Public Safety Radio Services and to transmit to receivers at fixed locations: *Provided, That* no harmful interference will be caused to the base-mobile operations of any other authorized station.

(c) Interstate highway fixed stations are authorized to intercommunicate with other fixed stations in the Public Safety Radio Services and to transmit to receivers at fixed locations.

§ 10.604 *Station limitation.* (a) Mobile relay stations in the Interstate Highway Radio Service will be authorized only where a showing of need can be made in accordance with either or both of the following conditions:

(1) Where an interstate highway radio system cannot function satisfactorily without communications between mobile units over a distance in excess of that which can be obtained by direct car-to-car communication.

(2) Where an integrated system of radio communication is desirable between two or more interstate highway licensees and where, by the use of a mobile relay station, the integrated system results in an actual reduction in the number of frequencies required in the area as compared to the number of frequencies which would be required if the same number of licensees operate separate systems.

(b) Subject to the provisions of § 10.154, communication units of a licensed interstate highway mobile station may be installed in vehicles of contractors or other persons having direct responsibility for maintenance, supervision, or operation of highways which meet the standards prescribed by the Secretary of Commerce of the National System of Interstate and Defense Highways.

§ 10.605 *Frequencies available to the Interstate Highway Radio Service.* (a) The frequency or bands of frequencies listed herein are available for assignment to stations in the Interstate Highway Radio Service subject to the conditions and limitations of this section.

(b) The frequencies listed in paragraph (f) of this section as being avail-

able for assignment to mobile stations may be authorized for use at base stations only after coordination with other affected licensees in the area and subject to the conditions that no harmful interference will be caused to the service of any mobile station using the particular frequency. Evidence of the required coordination shall be submitted with any request for such use.

(c) The amount of separation between assignable frequencies listed in this section does not necessarily indicate the amount of frequency separation required for systems operation; accordingly, grants of adjacent channel assignments in all bands shall be at the discretion of the Commission.

(d) Normally no more than two frequencies will be assigned unless a satisfactory showing of need for a greater number of frequencies is made.

(e) Control and repeater stations in the Interstate Highway Radio Service may be authorized on a temporary basis to operate on frequencies available for base and mobile stations above 152 Mc; *Provided*, That an adequate showing is made why such operation cannot be conducted on frequencies allocated to the operational fixed service. Such operation on base and mobile frequencies will not be authorized initially nor renewed for periods in excess of one year. Any such authorization shall be subject to immediate termination if harmful interference is caused to the mobile service or if the particular frequency is required for mobile service operations in the area concerned.

(f) The following tabulations indicate the frequencies or bands of frequencies, class of stations to which they are normally available, and the specific assignment limitations, which are developed in paragraph (e) of this section.

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
72.2 to 74.58	Operational fixed	3.
75.42 to 75.98	do	3.
158.745	Base and mobile	5.
158.760	do	4.
158.775	do	5.
158.805	do	5.
158.820	do	4.
158.835	do	5.
158.865	do	5.
158.880	do	4.
158.895	do	5.
158.925	Mobile	5.
158.940	do	4.
158.955	do	5.
158.985	do	5.
159.000	do	4.
159.015	do	5.
159.045	do	5.
159.060	do	4.
159.075	do	5.
159.105	Base and mobile	5.
159.120	do	4.
159.135	do	5.
159.165	do	5.
159.180	do	4.
159.195	do	5.
453.000	do	5.
453.100	do	5.
453.150	do	5.
453.200	do	5.
453.250	do	5.
453.300	do	5.
453.350	do	5.
453.400	do	5.
453.450	do	5.
453.500	do	5.
453.550	do	5.
453.600	do	5.
453.650	do	5.
453.700	do	5.

Frequency or band	Class of station(s)	Limitations
<i>Megacycles</i>		
453.750	Base and mobile	5.
453.800	do	5.
453.850	do	5.
453.900	do	5.
453.950	do	5.
458.050	Mobile	5.
458.100	do	5.
458.150	do	5.
458.200	do	5.
458.250	do	5.
458.300	do	5.
458.350	do	5.
458.400	do	5.
458.450	do	5.
458.500	do	5.
458.550	do	5.
458.600	do	5.
458.650	do	5.
458.700	do	5.
458.750	do	5.
458.800	do	5.
458.850	do	5.
458.900	do	5.
458.950	do	5.
890 to 940	Operational fixed	1, 2.
952 to 960	do	1.
1850 to 1900	do	1.
2110 to 2200	do	1.
2450 to 2500	Base and mobile and operational fixed	1, 2.
2500 to 2700	Operational fixed	1.
3500 to 3700	Base and mobile	1.
6425 to 6575	do	1.
6575 to 6675	Operational fixed	1.
11700 to 12200	Base and mobile	1.
12200 to 12700	Operational fixed	1.
16000 to 18000	do	1, 2.
28000 to 30000	do	1.

(g) Explanation of assignment limitations appearing in the frequency tabulation of paragraph (d) of this section:

(1) Limited to the developmental operation only with the assigned frequency and particulars of operation specified in each authorization.

(2) Subject to no protection from interference due to the operation of industrial, scientific and medical devices in this band.

(3) Assignable frequencies spaced by 40 kc beginning with the frequencies 72.02 and 75.42 Mc and ending with the frequencies 74.58 and 75.98 Mc, respectively, are available on a shared basis with other services only in accordance with the provisions of § 10.101 (c).

(4) Available for assignment on and after November 1, 1963. An earlier assignment may be made: *Provided*, That the equipment proposed to be used meets the technical standards, set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963, when:

(i) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed have concurred with such earlier assignment; or

(ii) The applicant submits an acceptable engineering report indicating that harmful interference will not be caused to the operation of existing stations, together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

(5) Available for assignment: *Provided*, That:

(i) The equipment proposed to be used meets the technical standards set forth in Subpart C of this part, applicable to equipment in use on and after November 1, 1963; and

(ii) Listed frequencies 15 kc or less removed are presently assigned for use in the same area or the use of such frequencies is shown to be impracticable at the location proposed; and

(iii) The proposed station location is removed by at least 40 miles from the station location of each other station, except those of the applicant, authorized to operate on frequencies 30 kc or less removed; and

(iv) The application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed station and authorized to operate on frequencies 30 kc or less removed have concurred with such assignment or is accompanied by an acceptable engineering report indicating that harmful interference will not be caused to the operation of existing stations, together with a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on frequencies 30 kc or less removed have been notified of applicant's intention to request the assignment.

(h) Frequencies offset by less than 15 kc from those frequencies listed in the 152-162 Mc band may be assigned for developmental operation upon an adequate showing of the need for such irregular assignment together with a comprehensive engineering report indicating that excessive interference to the operation of other stations will not be caused thereby.

[F. R. Doc. 57-2882; Filed, Apr. 15, 1957; 8:45 a. m.]

[47 CFR Part 11]

[Docket No. 1191; FCC 57-356]

INDUSTRIAL RADIO SERVICES

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of Part 11, Rules Governing the Industrial Radio Services, to delete, modify and create Services, and to effect changes in the availability of frequencies.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. For a number of years, the Commission has concerned itself with the problem of creating additional frequency channels for assignment in the Industrial Radio Services to the end of affording relief to the more heavily congested of these Services, and to the further end of expanding eligibility for the benefit of large numbers of industrial and commercial enterprises not heretofore adequately provided for. Consistent with the foregoing, the Commission recently adopted a basic policy with respect to reductions in separations between presently-assignable frequencies in the 152-162 Mc band, and adopted such technical standards as are necessary to a

proper implementation of such reductions.¹ Although no provision for modified channel spacing in the 27.23-27.28, 162-174 Mc bands has as yet been made, the above and other existing technical standards will permit of implementation at such time as this modified channel spacing is provided for. The Commission is now prepared to take additional steps to further the above purposes.

3. As is generally known, operation in the Industrial Radio Services on present channels in the 450-460 Mc band has been on a developmental basis only. Reports submitted by licensees and other information available to the Commission strongly support a conclusion that continued developmental operation in this band is neither necessary nor appropriate; in view thereof, the time would appear to be at hand to place operation in this band on a regular basis, and such is here proposed. In connection with the foregoing, the Commission also believes that the most efficient and effective regularization with respect to this band can only be accomplished by providing additional assignable frequencies through the means of reducing the channel spacing of the existing frequencies below the figure presently obtaining. Additionally, the Commission is proposing to reallocate a large portion of the 460-470 Mc band from the Citizens Radio Service to the Industrial Radio Services. What has been said above concerning the 450-460 Mc band is equally applicable to the 460-470 Mc band, and the Commission is also here proposing regularization and reduced channel spacing with respect to the frequencies to be gained by the proposed reallocation.

4. To further add to the number of frequencies to be available to the Industrial Radio Services, the Commission believes that the channel spacing, in those portions of the 27.23-27.28 and 162-174 Mc bands which are presently allocated to these Services, should also be reduced. To the same end, the Commission is also proposing to make available (on a geographical basis) to the Industrial Radio Services six frequencies (three frequency pairs) which have resulted from the reduction of channel spacing with respect to the 152-162 Mc frequencies presently being utilized by licensees in the Taxicab Radio Service.

5. The effect of all of the foregoing, of course, is to create additional frequencies for ultimate availability in the Industrial Radio Services. All Industrial frequencies in the 27.23-27.28 and 450-470 Mc bands will be available for assignment on the effective date of any finalization of this proceeding. Those frequencies which have and will result from the reduction in channel separations in the 152-174 Mc band will be designated as either "secondary" or "tertiary" frequencies, and will be available for assignment in accordance with the provisions of the new § 11.8 (i) and (j) proposed herein.

6. In connection with the foregoing, the Commission has made a study as to

the best use that can be made of all of the frequencies that will be available for regular assignment in the Industrial Radio Services. In light of this study, the Commission believes that eligibilities of industrial and commercial enterprises can be increased beyond those presently obtaining, and that such apportionment and reapportionment of frequencies must be made as will promote the greatest and, at the same time, most equitable utilization of available spectrum space. In succeeding paragraphs the Commission will discuss some of the changes proposed to be effected. Interested persons are cautioned, however, that a reading of the specific amendments offered is essential to a complete understanding of the whole of the proposals herein.

7. During the conduct of the proceedings involved in the 1955 revision of the rules governing the Special Industrial Radio Service (Docket No. 9703), the Commission was made increasingly aware of the needs and desires of a wide variety of industrial and commercial enterprises for mobile radio facilities. In those proceedings, however, a number of factors dictated that the Commission principally concern itself with revisions to rules governing existing eligibles; consequently, it was able to accommodate only a fraction of the above enterprises. Chief among the above factors was the limited number of frequencies then available to this Service, particularly, as viewed in the light of the apparent saturation which had already been reached in some areas. Too, the above enterprises were so varied and numerous that there were no fundamental criteria under which some could be made eligible without, at the same time, making eligible many others of substantially equal importance—with an inevitable result of frequency congestion and interference. Accordingly, persons engaged in classes of activities for which no provision was made were advised that they should attempt to satisfy their radio needs by means of facilities available to them in the Citizens Radio Service or the Low Power Industrial Radio Service, or through the use of facilities offered by communications common carriers.

8. Radio facilities in the Low Power Industrial Radio Service are generally available to any person engaged in a commercial or industrial activity. Licensees are limited, however, to transmissions over comparatively short distances by restrictions as to transmitter power and antenna placement. All persons now eligible for station authorizations in the various other Industrial Radio Services or in the Land Transportation Radio Services, as well as most persons who have attempted to secure eligibility in the Special Industrial Radio Service, are eligible in the Low Power Industrial Radio Service; it is recognized, however, that the limitations in this Service prevent it from satisfying all of the needs of most of the above persons.

9. The Citizens Radio Service was established with a view to providing for the requirements of individuals and of industrial and commercial enterprises for private, short-distance radiocommunications, for radio signalling, and for

the remote control of objects and devices by radio. The primary development in this Service, however, has been by industrial and commercial enterprises attempting to meet their mobile and point-to-point communications needs; this development has been stimulated by the increased availability of equipment capable of reliable performance in the 460-470 Mc region. Almost without exception, the above enterprises are ones for whose activities no provision has been made in the major Industrial Services and for whom the Low Power Industrial Radio Service would be inadequate.

10. With the increased number of channels proposed to be available to the Industrial Radio Services, it now appears that the present limitations on eligibility in the Special Industrial Radio Service can be relaxed to the end of making this Service available to almost any person engaged in a business enterprise. If this is done, the basic distinctions among the classes of persons to be eligible in this Service, those already eligible in the Low Power Industrial Radio Service, and many of those holding Class A authorizations in the Citizens Radio Service, would largely disappear. In view thereof, it seems appropriate to combine the Special Industrial and the Low Power Industrial Radio Services into a new Service, to be known as the Business Radio Service, and to transfer to this new Service those licensees holding Class A station authorizations in the Citizens Radio Service who would be able to qualify in such new Service.² To serve this end (as has been heretofore stated) the Commission is also proposing to transfer a substantial

² The existing Low Power rules specifically contemplate the eligibility of "Educational or philanthropic institutions", and of "instrumentalities of State or local governments when the radio facility is to be used primarily for purposes not directly related to public safety." The former eligibility provision is being retained in the Business Radio rules. The latter provision, however, is being deleted for the following reason: In an associated Notice of Proposed Rule Making (Docket No. 11990), the Commission is proposing the establishment of a new Service to be known as the Local Government Radio Service. In this new Service licensees will be permitted to transmit any communication essential to any official activity of the licensee, even though the communication is for a non-safety purpose. In view of what appears to be adequate provision for these non-safety needs, it seems appropriate to delete the above-quoted clause in forming the new Business Radio Service. Of course, such governmental entities and subdivisions as can satisfy the remaining eligibility requirements of the Business Radio Service will not be barred because of their eligibility in the Local Government Radio Service.

By petition of September 19, 1956, Allen B. Du Mont Laboratories, Inc. seeks amendment of the rules which govern the Commission's Special Emergency Radio Service to provide therein for the eligibility of ministers—particularly, those "operating in rural or sparsely settled areas." There appears to be no persuasive reason why ministers, churches, synagogues, etc. should not enjoy the same access to radio facilities as is proposed for educational or philanthropic institutions, and it is believed that the essence of the Du Mont petition can be satisfied by providing in the Business Radio rules for the eligibility of "clergymen or ecclesiastical institutions." Accordingly, such is here done.

¹ See Report and Order of September 19, 1956 (FCC 56-901, released September 24, 1956) in Docket Number 11253.

number of frequency channels from the Citizens Radio Service to this proposed Business Radio Service. In addition, it is proposing to make available (for narrow-band emission) to the Business Radio Service certain band-edge channels not broad enough to permit of 15 kc separations. Comments are here specifically invited as to methods by which this proposal can be implemented and as to what additional technical standards are appropriate therefor. In light of the liberal eligibility provisions of the proposed Business Radio Service, the Commission has made a study of existing and potential usage of the frequencies in the 1.6-6.0 Mc range; these frequencies are presently available for assignment in the Special Industrial Radio Service and in certain of the other Industrial Radio Services upon a satisfactory showing under § 11.58 (a) (1). As a result of this study, the Commission concludes that an already acute frequency-congestion problem would be severely aggravated were these frequencies to be included among those to be made available to the new Service. Accordingly, such inclusion is not here proposed. Comments looking toward the availability of the frequencies in question to particular industrial or commercial enterprises covered by the new Service should specifically explain why contemplated operations cannot be satisfactorily conducted on higher frequencies, giving particular emphasis to the safety-of-life aspect. Upon the receipt of comments persuasive as to a bona fide need, the Commission will provide for such need to an extent consistent with continued effective utility of the frequencies in question.

11. As a consequence of representations by the Committee on Manufacturers Radio Use of the National Association of Manufacturers, the Commission has become aware of what appear to be special needs by manufacturing plants for (1) reliable radiocommunications circuits for use in production control in certain industrial processes requiring split-second timing; (2) security and other internal purposes; and (3) localized materials-handling. Accordingly, it appears that, in addition to a need for general area-wide dispatching of mobile units and a need for low-power short-range communications (both of which could possibly be satisfied in the proposed Business Radio Service), the manufacturing industry has a need for the assignment of reasonably-protected frequencies with which to obtain localized communication facilities for the above specific purposes. The Commission has been unable to determine a means by which this need can be met to the extent requested by the above Committee; however, that part of this specialized communications need which is possibly not adequately met by the proposed Business Radio Service, can be satisfied by the establishment of a new Manufacturers Radio Service, to be independent from but supplemental to the proposed Business Radio Service.

12. For the purpose of making frequencies available for use by stations in the proposed Manufacturers Radio Service, the Commission has made an extensive study of the frequency-utiliza-

tion in the existing Industrial Radio Services, and has concluded that, from the standpoint of possible geographical sharing of frequencies among Services, the Petroleum Radio Service and the Forest Products Radio Service can most readily share with the new service. It is recognized that, in certain areas, all mobile service frequencies available to the Petroleum Radio Service appear to be heavily loaded; however, it is believed that these areas are not the areas where manufacturing industries are or will become concentrated. Similarly, in certain areas, the mobile service frequencies available to the Forest Products Radio Service appear to be fully occupied by stations in that Service; in other areas, however, they remain unused. Accordingly, it is proposed that certain frequencies now available to the Forest Products Radio Service, some of which are presently shared with the Petroleum Radio Service, be also made available in the new Manufacturers Radio Service. In addition, the Commission also proposes that certain other frequencies being reallocated from the Citizens Radio Service be made available to the Manufacturers Radio Service. This latter action also appears appropriate in the transfer of industrial activities and commercial enterprises from the Citizens Radio Service, since many of the persons who would use the Manufacturers Radio Service have previously been able to meet their needs only in the Citizens Radio Service.

13. The Commission has made exhaustive studies of the present and probable loading in the major Industrial Radio Services, and these studies have formed the basis of the tables of frequency-availabilities set forth in the proposed rules. A general outline of the Commission's apportionment plan is set forth in succeeding paragraphs.

14. With respect to the Motion Picture Radio Service and the Relay Press Radio Service, the Commission believes that the existing and anticipated loading in these Services justifies neither the making available therein of those channels which have been and will be obtained through separation-reductions in the 152-162, 162-174 and 450-460 Mc bands, nor continuing the access by these Services to the 450-460 Mc frequencies which they have heretofore shared with the other Industrial Radio Services. The Commission, however, is proposing to reduce the separations in the 27.23-27.28 Mc band, and the above Services will be permitted to share in the use of both the old and the new channels.

15. The Commission believes that, in general, the Power Radio Service, the Petroleum Radio Service and the Forest Products Radio Service must be permitted to respectively retain those channels which have been obtained by the separation-reductions in their presently-available 152-162 Mc channels, those which will result from similar separation-reductions in their presently-available 162-174 Mc channels, and those which will result from separation-reductions in the presently available 27.23-27.28 Mc channels. There is one important exception to the foregoing: Because of the comparatively heavy fre-

quency-utilization by the Forest Products Radio Service in the states of Oregon and Washington, and by the Petroleum Radio Service in the states of Texas, Oklahoma, Louisiana and Arkansas, the Commission believes that the Power Radio Service must be deprived (in these six states) of the secondary channels which have been obtained by the reduction in separations with respect to its present 152-162 Mc channels. Accordingly, it is proposed that these secondary channels be made available to the Forest Products Radio Service in the states of Oregon and Washington, and to the Petroleum Radio Services in the other four states. Additionally, the Commission proposes that Petroleum and Forest Products Radio Services share in the utilization of six frequency-pairs in the 450-460 Mc band and that the Power Radio Service have exclusive use of five frequency pairs in this band. Finally, in this regard, it is proposed that the Petroleum Radio Service and the Forest Products Radio Service receive from the Taxicab Radio Service a qualified access to those channels which have derived from reducing the separation of the latter Service's present 152-158 Mc frequencies, the newly-acquired frequencies to be available only outside Standard Metropolitan Areas of 50,000 or more population.

16. Attention is also specifically directed to several proposed changes affecting the Power Radio Service. In an associated Notice of Proposed Rule Making, the Commission is proposing the establishment (under Part 10 of the Rules) of a new Service to be known as the Local Government Radio Service. A large number of channels are proposed to be allocated to this Service, and its creation will enable the Commission to provide for all of the radiocommunication requirements of state and local governmental entities and subdivisions. This proposal affects the Power Radio Service in that such publicly-controlled entities as are presently eligible in the Power Radio Service will also be eligible in the new Service. It is felt that many such entities—engaged in both "eligible" and "ineligible" activities under the Power rules—will wish to transfer their operations to the new Service, thereby enabling themselves to use radio in connection with all of their activities.

17. It has long been recognized by the Commission that communication common carriers have need for radio facilities in connection with construction and maintenance activities. Thus, by Report and Order of September 19, 1956 (FCC 56-894—released September 21, 1956) in Docket No. 11435, the Commission made communication common carriers eligible in the Power Radio Service and gave them access to a total of three one hundred kilocycle frequency-pairs in the 450 Mc band, such frequencies, of course, to be assigned only for Developmental Operation and to be shared with other radio services. In providing the above three pairs, the Commission recognized that it was not meeting the stated requirements of the common carriers, but declared a belief that the three pairs would meet the present requirements of such carriers. For reasons stated in a

Memorandum Opinion and Order being released simultaneously herewith (FCC 57-355), the Commission is therein withdrawing the foregoing Report and Order, is withdrawing its associated Notice of Proposed Rule Making, and is terminating that entire proceedings; these actions are predicated upon a decision to repropose in the instant proceeding a limited eligibility of the communications common carriers in the Power Radio Service.

18. Although the above-described need of the communications common carriers has not been seriously challenged, it has been strongly contended that the Commission should not attempt to satisfy this need by including the carriers as eligibles under the Power Radio Service Rules. The foregoing contention is grounded, principally, in considerations relating to frequency congestion and coordination of frequency usage within the Power Radio Service. To date, however, there has been no effective challenge of the basic premises pointing to the propriety of our classifying carriers with gas, electric and water companies. These premises can be summarized as follows: (1) The public's access to a communication service is a convenience of the same general importance as its access to gas, electric and water services. (2) Carriers normally serve the same general areas as do gas, electric and water companies. (3) The overall characteristics of the carriers are similar, in many respects, to those of the above companies.

19. As has been above suggested, the Commission does not propose to make all of the frequencies which will be allocated to the Power Radio Service available to the communication common carriers. Based upon the inherent need of the telephone industry for a number of exclusive channels, the Commission believes that the most satisfactory arrangement can be effected by making available to the carriers a total of five^{*} fifty kilocycle frequency-pairs (ten frequencies) in the 450 Mc band on a nonsharing basis. To assure such exclusively *ab initio* the Commission has selected these frequencies from those being obtained by the reduction in channel separations in this band. In connection with this question of frequency availability, the Commission believes that the carriers can satisfy their additional frequency requirements by taking advantage of their eligibility in the Business Radio Service should the simultaneous proposal with respect thereto be finalized.

20. It should be noted that the Commission is here attempting to provide for the communication requirements of the common carriers only to the extent that they involve construction and maintenance activities; the above proposals in no way contemplate that the frequencies in question be used by the carriers for public correspondence. In this connection, American Telephone and Telegraph Company presently has before the Commission a petition (filed October 7, 1955) requesting that "such ad-

ditional space be allocated to domestic public mobile service in the range 60-500 megacycles to permit the development of multi-channel common carrier telephone facilities having a capacity of 200 two-way channels." The instant proposal should not be considered as dispositive, in whole or in part, of the questions presented by this petition.

21. In the event that communications common carriers are made eligible in the Power Radio Service, the Commission proposes to rename such service the "Utilities Radio Service", the latter title becoming more descriptive of the whole of the eligibles in the said Service.

22. Pending in Commission files are two petitions filed on November 7, 1956, by the Special Industrial Radio Service Association (SIRSA), one petition filed on November 15, 1956, by the National Committee for Utilities Radio (NCUR), one petition filed on December 14, 1956, by Kaar Engineering Corporation (Kaar), two petitions filed in January 1957 by the Central Committee on Radio Facilities of the American Petroleum Institute (API), two petitions filed by Forest Industries Communications (FIRC) and one petition filed jointly on March 6, 1957, by National Ready Mixed Concrete Association (NRMCA) and National Sand and Gravel Association (NSGA). One of the SIRSA petitions requests an exclusive allocation to the Special Industrial Radio Service of "those new frequencies in the 152-162 Mc band which are immediately adjacent to the present Special Industrial allocations."^{*} The other SIRSA petition requests the Commission to "(1) establish permanent service rules and service frequency assignments for the present industrial 450-460 Mc band allocations, (2) include in these rules appropriate provision for both mobile and operational fixed purposes, and (3) reduce channel separations to 50 kc in the 450-460 Mc assignments so derived."^{*} The NCUR petition can be summarized as requesting for the Power Radio Service exclusive allocation of "the new channels made available through the reduction in channel separation of [the 152-162 Mc] frequencies heretofore assigned to the Power Radio Service." The Kaar petition requests that, in implementing the determinations in Docket 11253, the Commission make available to the Low Power Industrial Radio Service at least three additional frequencies in the 152-174 Mc range. A January 2 petition by API asks that the Commission "assign for the use of those eligible in the Petroleum Radio Service the additional channels made assignable by reason of the Commission's recent Report and Order in Docket No. 11253." Finally, an FIRC petition of January 23, 1957, asks for the allocation of eleven of the new channels in the 152-162 Mc range, three exclusively and eight on a shared basis. To the extent that the above requests can be said to be at variance with what

^{*}The NRMCA-NSGA petition is to the same effect, except that it does not propose an exclusive allocation.

^{*}One of the API petitions (filed on January 9, 1957) is to the same effect, and a March 11, 1957, petition by FIRC concerns itself with the same subject matter.

is proposed herein, they will be considered in any disposition of this proceeding. Of course, such additional comments as may be submitted by SIRSA, NCUR, Kaar, API, FIRC, NRMCA and NSGA will also be considered.

23. The proposed amendments are set forth below. Authority for these amendments is contained in sections 4 (i) and 303 (a-i) and (r) of the Communications Act of 1934, as amended.

24. Any interested person who is of the opinion that the proposed amendments should not be adopted, or should not be adopted in the form set forth below, may file with the Commission, on or before June 10, 1957, written data, views or arguments setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed on or before the tenth day following the last day for the filing of original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all timely-filed comments prior to taking final action in this matter, and, if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

25. In accordance with the provisions of § 1.764 of the Commission's Rules, any statement, brief or comment filed in the above-entitled proceeding must be accompanied by 14 additional copies thereof.

Adopted: April 3, 1957.

Released: April 9, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,^{*}

[SEAL] BEN F. WAPLE,
Acting Secretary.

Proposed amendments to Part 11, Rules Governing the Industrial Radio Services:

1. Amend § 11.8 (a) to read as follows:

§ 11.8 Policy governing the assignment of frequencies. (a) The frequencies which normally may be assigned to stations in any one of the several Industrial Radio Services are listed in the applicable subpart of this part. All licensees of stations in these services shall cooperate in the use of the frequencies assigned in order to minimize interference, and thereby obtain the most effective use of the authorized facilities. Each frequency or band of frequencies listed in this part is available on a shared basis only and will not be assigned for the exclusive use of any one licensee. The use of any frequency may be restricted as to hours of operation as well as to one or more geographical areas. Except for applications in the Business Radio Service, each application requesting assignment of a frequency not previously authorized for use by the applicant shall

^{*}Commissioners Hyde, Doerfer and Mack not participating. Concurring statement of Commissioner Bartley filed with the original document.

^{*}Raising to ten the total number of 450 Mc channels to be allocated to the Power Radio Service (see paragraph 15, *supra*).

be accompanied by evidence of frequency coordination in the form set forth in either subparagraph (1) or (2) of this paragraph.

(1) A report based on a field study covering the area within a radius of 75 miles of the proposed station indicating the probable interference to existing stations operating on any frequency removed by not more than 60 kilocycles from the requested frequency and a statement under oath that all existing licensees operating on such frequencies within the prescribed area have been notified of the applicant's intention to request the particular frequency.

(2) In lieu of the report and statement described in subparagraph (1) of this paragraph, the applicant may submit a statement from a frequency advisory committee recommending the specific frequency within the band requested by the applicant (except in frequency bands below 25 megacycles) which in the opinion of the committee will result in the least amount of interference to existing stations in the particular area. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for radio facilities in the service concerned in the area the committee purports to serve. In addition to selection of specific frequencies, committee recommendations may appropriately include comments on other technical factors such as power, antenna height and characteristics which may serve to mitigate any contemplated interference situation. The functions of such committees must be purely advisory in character to the applicant and the Commission, and their recommendations cannot be considered as binding upon either the applicant or the Commission.

2. Amend § 11.8 by the addition of the following new paragraphs:

(f) Frequencies designated as "secondary" and "tertiary" are available for assignment in accordance with the following:

(1) Secondary frequencies become available on November 1, 1963; however, earlier assignment may be made when the transmitting equipment proposed to be installed is capable of meeting the technical standards set forth elsewhere in this part and applicable to equipment installed after November 1, 1963, and when the application is accompanied by either a notarized statement that the licensees of all stations located within 75 miles of the proposed station and authorized to operate on frequencies removed by 30 kc or less from the proposed frequency concur with such earlier assignment; or an engineering showing which clearly indicates that the proposed station will not cause harmful interference to any station located within 75 miles of the proposed station and authorized to operate on frequencies removed by 30 kc or less from the proposed frequency.

(2) Tertiary frequencies become available on November 1, 1963 for use at locations removed by at least 40 miles from

the location of all stations authorized to operate on frequencies removed by 30 kc or less from the proposed frequency; however, earlier assignment may be made at such locations on the same basis as that providing for earlier assignment of secondary frequencies set forth in subparagraph (1) of this paragraph.

(j) In the region 152-175 Mc, frequencies offset by less than 15 kc from those listed as available may be assigned on the same basis and showing as tertiary frequencies when also accompanied by adequate showing of the need for such irregular assignment.

3. It is proposed to delete the present index references, titles and text of Subpart K (Special Industrial Radio Service) and Subpart L (Low Power Industrial Radio Service) and substitute the following new index references, titles and text.

SUBPART K—BUSINESS RADIO SERVICE

- Sec.
11.501 Eligibility.
11.502 Availability and use of the Service.
11.503 Mobile Relay Stations.
11.504 Frequencies available for Base and Mobile Stations.
11.505 Frequencies available for Operational Fixed, Base and Mobile Stations.
11.506 Frequencies available for Operational Fixed Stations.
11.507 Non-safety interbase communications.
11.508 Exemption from technical standards.

SUBPART L—MANUFACTURERS RADIO SERVICE

- 11.551 Definition.
11.552 Eligibility.
11.553 Station limitations.
11.554 Frequencies available.

SUBPART K—BUSINESS RADIO SERVICE

§ 11.501 *Eligibility.* The following persons are eligible to hold authorizations to operate radio stations in the Business Radio Service:

- (a) Any person engaged in any lawful business activity and proposing to use the radio facilities requested in connection with that activity only.
(b) Educational or philanthropic institutions.
(c) Clergymen or ecclesiastical institutions.
(d) A subsidiary corporation proposing to furnish a nonprofit radiocommunication service to its parent corporation or to another subsidiary of the same parent if the parent or the other subsidiary is engaged in an activity contemplated by paragraph (a) of this section.

§ 11.502 *Availability and use of the service.* (a) Pursuant to the provisions of § 11.8, frequencies authorized to stations in the Business Radio Service can be used only on a shared and cooperative basis. Any licensee in this service must expect operations in the same area by other licensees on the same frequency, and must cooperate fully in the joint use of the assigned frequency. In areas of extreme frequency congestion, the Commission may require monitoring of the assigned frequency before transmitting. All stations in this service must accord first priority for use of the frequency concerned to any communication

resulting from an actual emergency involving immediate danger to life or property.

(b) In any area where the shared use of frequencies in the Business Radio Service results in an uneven distribution of the total communications load between the available frequencies, the Commission will consider applications for appropriate frequency change.

(c) Certain frequencies are available for assignment for fixed service operations in this service on a limited basis; however, extensive licensing of point-to-point systems must await further development of the Commission's microwave program. Accordingly, requests for point-to-point facilities will be considered on a case-by-case basis. In general, requests for such point-to-point facilities should clearly establish either (1) that a number of Fixed Stations at permanent locations are required to provide communications between isolated establishments or from such establishments to points at which established communication facilities are available, or (2) that the use of a remotely located Base Station, with which a requested fixed control and fixed relay link is proposed to be used, is necessary to maintain communications with mobile units for the conduct of authorized communications. Point-to-point facilities will not be authorized for the transmission of any type of signal or communication between two locations within the same Standard Metropolitan Area except for the purpose of providing a fixed control and fixed relay link where the remote placement of a Base Station has been justified.

§ 11.503 *Mobile Relay Stations.* Mobile Relay Stations will not be licensed in the Business Radio Service within the continental limits of the United States, except when such stations and all associated base and mobile stations applied for are proposed to be operated exclusively on frequencies above 450 Mc; *Provided, however,* that the provision of this subsection shall not apply to Mobile Relay Stations authorized in the Special Industrial Radio Service prior to November 1, 1955.

§ 11.504 *Frequencies available for Base and Mobile Stations.* The following frequencies are available for assignment to Base and Mobile Stations, or to Mobile Stations only, in the Business Radio Service, under the conditions specified:

(a) For use by Mobile Stations or by Base Stations operated at fixed locations, when employing transmitters having not more than 180 watts plate power input to the final radio frequency stage:

(1) In the Business Radio Service only:

Mc	Mc	Mc	Mc
27.310	35.740	43.060	49.980
27.350	35.780	43.100	¹ 154.475
27.390	35.820	43.140	154.490
27.430	35.860	43.180	¹ 154.505
27.470	35.900	49.860	
30.580	35.940	49.900	
30.620	43.020	49.940	

¹ Tertiary frequency—see § 11.8 (1).

(2) In the Business Radio Service on a shared basis with stations in certain other services:

Mc	Mc	Mc	Mc
49.540	49.740	* 152.900	* 152.975
49.580	49.780	* 152.915	152.990
49.620	49.820	152.930	* 153.005
49.660	* 152.855	* 152.945	* 153.020
49.700	152.870	* 152.960	

* Secondary frequency—see § 11.8 (i).

* Tertiary frequency—see § 11.8 (i).

(3) In the Business Radio Service only:

Frequency Pairs

Base only (Mc)	Mobile only ¹ (Mc)
451.85	456.85
451.90	456.90
451.95	456.95
461.05	466.30
461.10	466.35
461.15	466.40
461.20	466.45
461.25	466.50
462.30	467.55
462.35	467.60
462.40	467.65
462.45	467.70
462.50	467.75
462.55	467.80
462.60	467.85
462.65	467.90
462.70	467.95
462.75	468.00
462.80	468.05
462.85	468.10
462.90	468.15
462.95	468.20
463.00	468.25
463.05	468.30
463.10	468.35
463.15	468.40
463.20	468.45
463.25	468.50
463.30	468.55
463.35	468.60
463.40	468.65
463.45	468.70
463.50	468.75
463.55	468.80
463.60	468.85
463.65	468.90
463.70	468.95
463.75	469.00
463.80	469.05
463.85	469.10
463.90	469.15
463.95	469.20
464.00	469.25
464.05	469.30
464.10	469.35
464.15	469.40
464.20	469.45
464.25	469.50
464.30	469.55
464.35	469.60
464.40	469.65
464.45	469.70
464.50	469.75
464.55	469.80
464.60	469.85
464.65	469.90
464.70	469.95

* A Mobile Station may be assigned the frequency of an associated Base Station in lieu of the Mobile frequency paired therewith in accordance with the above table when the mobile service system is designed for the single frequency method of operation.

(4) In the Business Radio Service for narrow-band emission only under terms of a developmental grant: *Provided, however, That these frequencies are available for assignment in accordance*

with § 11.8 (j): and *provided further, That the sum of the bandwidth occupied by the emitted signal plus the bandwidth required for frequency tolerance shall not exceed the frequency band indicated.*

Frequency band (Mc)

154.4600-154.4675
173.2000-173.2075
173.2075-173.2125
173.3875-173.3925
173.3925-173.4000

(b) For use by Mobile Stations, and by Base Stations authorized to be operated at temporary locations only, in the Business Radio Service when such stations employ transmitters having not more than 30 watts plate power input to the final radio frequency stage: *Provided, however, That these frequencies are not available for use by stations which are part of any communications system utilizing any station at a fixed location:*

Mc	Mc	Mc	Mc
* 158.325	465.35	465.70	466.05
* 158.340	465.40	465.75	466.10
* 158.355	465.45	465.80	466.15
* 158.385	465.50	465.85	466.20
* 158.400	465.55	465.90	466.25
* 158.415	465.60	465.95	
465.30	465.65	466.00	

* Secondary frequency—see § 11.8 (i).

* Tertiary frequency—see § 11.8 (i).

(c) For use by Mobile Stations in the Business Radio Service, when such stations employ transmitters having not more than 3 watts plate power input to the final radio frequency stage.

(1) For use by Mobile Stations other than those aboard Aircraft:

Mc	Mc	Mc	Mc
33.140	* 154.525	154.570	* 154.615
35.020	* 154.540	* 154.585	
42.980	* 154.555	* 154.600	

* Secondary frequency—see § 11.8 (i).

* Tertiary frequency—see § 11.8 (i).

(2) For use by Mobile Stations including those aboard Aircraft:

Mc
27.510

(d) Subject to the applicable provisions of § 11.54, authorization for the operation of a Base Station in the Business Radio Service at temporary locations will be granted only for operation on the frequencies specified in paragraph (b) of this section or on the frequencies 27.31, 27.35, 27.39, 43.02, 43.06, 43.10, 43.14, 49.70 or 152.87 Mc: *Provided, however, That a Base Station may be authorized to be operated at temporary locations on any frequency listed in paragraph (a) of this section when it is to be operated at all times within direct communication range of one or more permanently located Base Stations operated by the same licensee.*

§ 11.505 *Frequencies available for Operational Fixed, Base and Mobile stations.* (a) The following frequency pairs are available for assignment to stations in the Business Radio Service in accordance with paragraph (b) of this section:

Frequency Pairs

Base and Mobile (Mc)	Mobile only (Mc)
461.30	466.55
461.35	466.60
461.40	466.65
461.45	466.70
461.50	466.75
461.55	466.80
461.60	466.85
461.65	466.90
461.70	466.95
461.75	467.00

(b) The frequencies listed in paragraph (a) of this section are available primarily for assignment to Base and Mobile Stations, and secondarily for assignment to Fixed Relay and Control Stations. Not more than one pair of frequencies will be assigned for use by the stations of any single mobile service radio system, except upon adequate showing of need. Only one frequency of such pair will ordinarily be assigned to any Mobile Station, and the lower frequency of that pair will not be assigned to such Mobile Station unless the system is designed for the single frequency method of operation and the same frequency is also assigned to an associated Base Station. An Operational Fixed Station to be operated as a part of a mobile service radio system may be assigned either of the paired frequencies available to the Base or Mobile Stations of the same mobile service radio system, subject however, to the following additional restrictions and limitations on assignment and use:

(1) All use by Operational Fixed Stations is subject to the condition that harmful interference shall not be caused to stations in the mobile service operating on these frequencies in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

(2) The frequencies are available for assignment only to those Operational Fixed Stations which function as integral and essential parts of a mobile service radio system. Such Operational Fixed Stations include only those which are operated as part of a radio circuit over which messages normally are sent to or from a Mobile Station without interruption for manual relaying at intermediate points.

(3) Fixed Relay Stations may be used to provide two automatic retransmissions of a mobile service message. Additional automatic retransmission on these frequencies by means of such stations is prohibited.

(c) The following frequencies are available for assignment to Base, Mobile or Operational Fixed Stations in the Business Radio Service (on a shared basis with stations in the same and other services), subject to no protection from interference due to the operation of industrial, scientific or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

Frequencies (Mc)

27.235
27.245
27.255
27.265
27.275

(d) Notwithstanding the provisions of § 11.103, stations authorized to be operated on the frequencies listed in paragraph (c) of this section may be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(e) Stations authorized to be operated on the frequencies listed in paragraph (c) of this section may also be authorized to be operated thereon by self-actuating or other electrical or mechanical means not under the direct control of any individual: *Provided, however, That whenever such unattended and uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.*

§ 11.506 *Frequencies available for Operational Fixed Stations.* (a) Subject to the condition that no harmful interference will be caused to reception of television channels 4 or 5, the following frequencies are available for assignment to Operational Fixed Stations in the Business Radio Service, on a shared basis with stations in other services:

Mc	Mc	Mc	Mc
72.02	72.82	73.62	74.42
72.06	72.86	73.66	74.46
72.10	72.90	73.70	74.50
72.14	72.94	73.74	74.54
72.18	72.98	73.78	74.58
72.22	73.02	73.82	74.62
72.26	73.06	73.86	74.66
72.30	73.10	73.90	74.70
72.34	73.14	73.94	74.74
72.38	73.18	73.98	74.78
72.42	73.22	74.02	74.82
72.46	73.26	74.06	74.86
72.50	73.30	74.10	74.90
72.54	73.34	74.14	74.94
72.58	73.38	74.18	74.98
72.62	73.42	74.22	75.02
72.66	73.46	74.26	75.06
72.70	73.50	74.30	75.10
72.74	73.54	74.34	75.14
72.78	73.58	74.38	75.18

(b) Frequencies in the following bands are available for assignment to Operational Fixed Stations in the Business Radio Service on a shared basis with stations in certain other services under the terms of a developmental grant only:

Frequency bands ² (Mc)	Frequency bands ² (Mc)
890-940	6575-6875
952-960	10550-10700
1850-1990	12200-12700
2110-2200	13200-13225
2450-2500	16000-18000
2500-2700	26000-30000

¹ Use of frequencies in the bands 890-940 Mc, 2450-2500 Mc, and 16000-18000 Mc is subject to no protection from interference due to the operation of industrial, scientific and medical devices on the frequencies 915, 2450 and 18000 Mc.

² Subject to the proceedings in Docket Number 11866.

§ 11.507 *Nonsafety interbase communications.* Except for the transmis-

sion of communications relating directly to the safety of life or to the protection of property, or except upon specific authorization by the Commission, no base station in the Business Radio Service shall be used for the transmission of communications addressed to, or to be relayed by, any other base station. Requests for authority for such nonsafety interbase communications must show either (a) that the nature of the applicant's operations requires an occasional transmission of messages between base stations for the express purpose of communicating with mobile units beyond the communication range of the station originating the call and that such communications will be limited to those of an urgent nature requiring immediate transmission by radio, or (b) that, for each base station involved, the applicant has a need for base-to-base communications in accordance with the provisions of § 11.151 (c) (2) (ii) and that other communication facilities between the points involved are not available and are impractical to construct from an engineering or financial standpoint.

§ 11.508 *Exemption from technical standards.* Transmitters authorized to operate on the frequencies 27.51, 35.02, 42.98, 154.525, 154.540, 154.555, 154.570, 154.585, 154.6 and 154.615 Mc and which have a plate power input to the final radio frequency stage not exceeding 200 milliwatts are exempt from the technical requirement set out in §§ 11.102, 11.104, and 11.105: *Provided, however, That the sum of the bandwidth occupied by the emitted signal plus the bandwidth required for frequency tolerance shall be so adjusted that any emission appearing on a frequency 40 kc (20 kc after November 1, 1963) or more removed from the assigned frequency is attenuated at least 30 db below the unmodulated carrier.*

SUBPART L—MANUFACTURERS RADIO SERVICE

§ 11.551 *Definition.* For the purpose of this subpart, manufacturing activities are defined as the activities directly involved in the mechanical or chemical transformation of organic or inorganic substances into new products within establishments usually described as plants, factories, shipyards, or mills and which employ, in that process, power-driven machines and materials handling equipment. Establishments engaged in assembling components of manufactured products in plants, factories, shipyards or mills are also engaged in manufacturing activities if the new product is neither a new structure nor other fixed improvement. Establishments primarily engaged in the wholesale or retail trade, or in service activities, even though they fabricate or assemble any or all of the products or commodities handled, shall not be considered to be engaged in manufacturing activities.

§ 11.552 *Eligibility.* (a) Persons directly engaged in manufacturing activities, as that term is defined in § 11.551, are eligible to hold authorizations to

operate radio stations in the Manufacturers Radio Service.

(b) A subsidiary corporation proposing to furnish a non-profit radiocommunication service to its parent corporation or to another subsidiary of the same parent is eligible in the Manufacturers Radio Service, if the parent corporation or the other subsidiary is engaged in a manufacturing activity as defined in § 11.551.

(c) Notwithstanding the provisions of § 11.6, the cooperative use of stations in the Manufacturers Radio Service shall not be authorized, either individually or through the medium of a corporation or association proposing to furnish a non-profit communication service to two or more persons.

§ 11.553 *Station limitations.* (a) The use of stations licensed in this service shall be limited to the transmission of communications or signals incident to plant security, to production control, or to materials handling which constitutes an immediate part of the manufacturing process, as contrasted to the collection of raw or semi-processed materials from other sources or the distribution or delivery of the finished products.

(b) No Base Station will be authorized in this service for operation at unspecified or temporary locations, nor to be located at any site outside the boundaries of a plant, factory, shipyard, mill or other manufacturing premises occupied and controlled by the licensee: *Provided, That when it is shown that a station location within the boundaries of any plant, factory, shipyard, mill or other manufacturing premises occupied and controlled by the licensee is impracticable, the Commission may authorize a location immediately adjacent thereto.*

(c) No Base Station in this service will be authorized to utilize an antenna which extends more than fifty feet above ground level, or which extends more than twenty feet above the top of any building within five hundred feet of that antenna, whichever permits the greater antenna height.

(d) No fixed stations of any class will be authorized in this service.

§ 11.554 *Frequencies available.* The following frequencies are available for assignment to Mobile Stations and to Base Stations (including Mobile Relay Stations on frequencies above 450 Mc only) in the Manufacturers Radio Service, for use only by stations employing transmitters having not more than 30 watts plate power input to the final radio frequency stage:

(a) On a shared basis with stations in other services:

Mc	Mc	Mc
153.035	153.185	153.320
153.050	153.200	153.335
153.065	153.215	153.350
153.080	153.230	153.365
153.095	153.245	153.380
153.110	153.260	153.395
153.125	153.275	153.410
153.140	153.290	153.425
153.155	153.305	153.440
153.170		

² Secondary frequency—see § 11.8 (1).

³ Tertiary frequency—see § 11.8 (1).

Frequency Pairs

Base and Mobile (Mc)	Mobile only ¹ (Mc)
461.80	467.05
461.85	467.10
461.90	467.15
461.95	467.20
462.00	467.25
462.05	467.30
462.10	467.35
462.15	467.40
462.20	467.45
462.25	467.50

¹ A Mobile Station may be assigned the frequency of an associated Base Station in lieu of the Mobile frequency paired therewith in accordance with the table when the mobile service system is designed for the single frequency method of operation.

4. Subpart F—Power Radio Service is proposed to be amended in the following particulars:

a. Amend title of subpart to read: "Subpart F—Utilities Radio Service".

b. Wherever it appears in the sections in Subpart F, delete the term "Power Radio Service" and substitute therefor the term "Utilities Radio Service".

c. In each of subparagraphs (1), (2) and (3) of § 11.251 (a), delete the word "primarily".

d. In § 11.251 (a), redesignate paragraph (4) as paragraph (5) and add a new paragraph (4) to read as follows:

(4) Persons engaged in offering a communications common carrier service by means of radio or wire line, for use by the general public or by members of a cooperative organization.

e. Amend paragraph (a) of § 11.252 to read as follows:

§ 11.252 *Frequencies available for Base and Mobile Stations.* (a) The following frequencies are available for assignment to Base and Mobile Stations in the Utilities Radio Service (except those of communications common carriers eligible under § 11.251 (a) (4) or (5)) only:

Mc	Mc	Mc	Mc
37.46	47.98	¹ 153.440	153.710
37.50	48.02	² 153.455	² 153.725
37.54	48.06	153.470	153.740
37.58	48.10	² 153.485	² 153.755
37.62	48.14	¹ 153.500	¹ 153.770
37.66	48.18	² 153.515	² 153.785
37.70	48.22	153.530	153.800
37.74	48.26	² 153.545	² 153.815
37.78	48.30	¹ 153.560	¹ 153.830
37.82	48.34	² 153.575	² 153.845
37.86	48.38	153.590	153.860
47.70	48.42	² 153.605	² 153.875
47.74	48.46	¹ 153.620	¹ 153.890
47.78	48.50	² 153.635	² 153.905
47.82	48.54	153.650	153.920
47.86	² 153.395	² 153.665	
47.90	153.410	¹ 153.680	
47.94	² 153.425	² 153.695	

¹ Secondary frequency—see § 11.8 (1).

² Tertiary frequency—see § 11.8 (1).

³ Not available for assignment to stations in the Utilities Radio Service within the States of Texas, Oklahoma, Arkansas, Louisiana, Washington, and Oregon.

f. In § 11.252 amend paragraph (b) preceding the frequency table to read as follows:

(b) The following frequencies are available for assignment to Base and Mobile Stations in the Utilities Radio Service (except those of communications

common carriers eligible under § 11.251 (a) (4) or (5)) on a shared basis with certain other services:

g. In § 11.252 amend paragraph (d) preceding the frequency table to read as follows:

(d) Frequencies in the bands listed below are available for assignment to Base and Mobile Stations in the Utilities Radio Service (except those of communications common carriers eligible under § 11.251 (a) (4) or (5)) on a shared basis with certain other services, under the terms of a developmental grant only: the exact frequency and the authorized bandwidth will be specified in the authorization.

h. In § 11.253 amend paragraph (a) preceding the frequency table to read as follows:

§ 11.253 *Frequencies available for operational fixed stations.* (a) Subject to the condition that no harmful interference will be caused to reception of television channel number 4 or 5, the following frequencies are available for assignment to Operational Fixed Stations in the Utilities Radio Service (except those of communications common carriers eligible under § 11.251 (a) (4) or (5)) on a shared basis with certain other services:

i. In § 11.253 amend paragraph (b) preceding the frequency table to read as follows:

(b) Frequencies in the bands listed below are available for assignment to Operational Fixed Stations in the Utilities Radio Service (except those of communications common carriers eligible under § 11.251 (a) (4) or (5)) on a shared basis with certain other services, under the terms of a developmental grant only. The exact frequency and the authorized bandwidth will be specified in the authorization.

j. Amend paragraph (a) of § 11.254 to read as follows:

§ 11.254 *Frequencies available for Base, Mobile and Operational Fixed Stations.* (a) The following frequency pairs are available for assignment to stations in the Utilities Radio Service (except for those of communications common carriers eligible under § 11.251 (a) (4) and (5)) only in accordance with paragraph (b) of this section:

Frequency Pairs	
Base and Mobile (Mc)	Mobile only (Mc)
451.05	456.05
451.15	456.15
451.25	456.25
451.35	456.35
451.45	456.45

k. Amend paragraph (b) preceding subparagraph (2) of § 11.254 to read as follows:

(b) The frequencies listed in paragraph (a) of this section are available primarily for assignment to Base and Mobile Stations, and secondarily for assignment to Fixed Relay and Control Stations. Not more than one pair of

frequencies will be assigned for use by the stations of any single mobile service and radio system, except upon adequate showing of need. Only one frequency of such pair will ordinarily be assigned to any Mobile Station, and the lower frequency of that pair will not be assigned to such Mobile Station unless the system is designed for the single frequency method of operation and the same frequency is also assigned to an associated Base Station. An Operational Fixed Station to be operated as a part of a mobile service radio system may be assigned either of the paired frequencies available to the Base or Mobile Stations of the same mobile service radio system, subject however, to the following additional restrictions and limitations on assignment and use.

(1) All use by Operational Fixed Stations is subject to the condition that harmful interference shall not be caused to stations in the mobile service operating on these frequencies in accordance with the table of frequency allocations as set forth in Part 2 or this chapter.

l. Delete the text of paragraphs (c) and (d) of § 11.254 and substitute the following new paragraphs (c), (d), and (e):

(c) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Stations in the Utilities Radio Service on a shared basis with stations in certain other services, subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

Frequencies (Mc)	
27.235	
27.245	
27.255	
27.265	
27.275	

(d) Notwithstanding the provisions of § 11.103, stations authorized to be operated on the frequencies listed in paragraph (c) of this section may be authorized to utilize any type of emission which occupies a bandwidth not greater than 8 kc.

(e) Stations authorized to be operated on the frequencies listed in paragraph (c) of this section may also be authorized to be operated by self-actuating or other mechanical or electrical means not under the direct control of any individual: *Provided, however, That, whenever such unattended and uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.*

m. Add a new § 11.255 to Subpart F to read as follows:

§ 11.255 *Frequencies available for Base and Mobile Stations of communications common carriers.* (a) The following frequencies are available for assignment to communications common carriers in the Utilities Radio Service only:

Frequency Pairs

Base and Mobile (Mc)	Mobile only (Mc)
451.10	456.10
451.20	456.20
451.30	456.30
451.40	456.40
451.50	456.50

(b) Not more than one pair of frequencies listed in paragraph (a) of this section will ordinarily be assigned for use by the stations of any single mobile service radio system, except upon adequate showing of need. Only one frequency of such pair will ordinarily be assigned to any Mobile Station and the lower frequency of that pair will not be assigned to such Mobile Station unless the system is designed for the single frequency method of operation and the same frequency is also assigned to an associated Base Station.

5. Subpart G. Petroleum Radio Service, is proposed to be amended in the following particulars:

a. Amend the table of frequencies appearing in paragraph (b) of § 11.302 to read as follows:

Mc.	Mc.	Mc.	Mc.
30.66	153.065	153.305	157.620
30.70	153.080	153.320	157.635
30.74	153.095	153.335	157.665
30.78	153.110	153.350	157.680
30.82	153.125	153.365	157.695
152.285	153.140	153.380	157.725
152.300	153.155	153.440	158.160
152.315	153.170	153.500	158.220
152.345	153.185	153.560	158.280
152.360	153.200	153.620	158.295
152.375	153.215	153.680	158.310
152.405	153.230	157.515	158.370
152.420	153.245	157.545	158.430
152.435	153.260	157.560	173.250
153.035	153.275	157.575	173.300
153.050	153.290	157.605	173.350

¹Secondary frequency—see § 11.8 (1).

²Tertiary frequency—see § 11.8 (1).

³Available for assignment in the Petroleum Radio Service within the States of Arkansas, Louisiana, Oklahoma, and Texas only.

⁴Available for assignment in the Petroleum Radio Service outside of Standard Metropolitan Areas of 50,000 or more population only.

b. Amend paragraph (a) of § 11.304 to read as follows:

§ 11.304 *Frequencies available for Base, Mobile and Operational Fixed Stations.* (a) The following frequency pairs are available for assignment to stations in the Petroleum Radio Service on a shared basis with stations in certain other radio services in accordance with paragraph (b) of this section:

Frequency Pairs

Base and Mobile (Mc)	Mobile only (Mc)
451.55	456.55
451.60	456.60
451.65	456.65
451.70	456.70
451.75	456.75
451.80	456.80

c. Amend paragraph (b) preceding subparagraph (2) of § 11.304 to read as follows:

(b) The frequencies listed in paragraph (a) of this section are available primarily for assignment to Base and Mobile Stations, and secondarily for as-

signment to Fixed Relay and Control Stations. Not more than one pair of frequencies will ordinarily be assigned for use by the stations of any single mobile service radio system, except upon adequate showing of need. Only one frequency of such pair will ordinarily be assigned to any Mobile Station and the lower frequency of that pair will not be assigned to such Mobile Station unless the system is designed for the single frequency method of operation and the same frequency is also assigned to an associated Base Station. An Operational Fixed Station to be operated as a part of a mobile service radio system may be assigned either of the paired frequencies available to the Base or Mobile Stations of the same mobile service radio system, subject, however, to the following additional restrictions and limitations on assignment and use.

(1) All use by Operational Fixed Stations is subject to the condition that harmful interference shall not be caused to stations in the mobile service operating on these frequencies in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

d. Delete the text of paragraphs (c) and (d) of § 11.304 and substitute the following new paragraphs (c), (d) and (e):

(c) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Stations in the Petroleum Radio Service (on a shared basis with stations in certain other services), subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

Frequencies (Mc)

27.235
27.245
27.255
27.265
27.275

(d) Notwithstanding the provisions of § 11.103, stations authorized to be operated on the frequencies listed in paragraph (c) of this section may be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(e) Stations authorized to be operated on the frequencies listed in paragraph (c) of this section may also be authorized to be operated thereon by self-actuating or other electrical or mechanical means not under the direct control of any individual; *Provided however*, That whenever such unattended and uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.

6. Subpart H, Forest Products Radio Service, is proposed to be amended in the following particulars:

a. Amend the table of frequencies appearing in paragraph (b) of § 11.352 to read as follows:

Mc	Mc	Mc	Mc
49.54	153.080	153.320	157.635
49.58	153.095	153.335	157.665
49.62	153.110	153.350	157.680
49.66	153.125	153.365	157.695
152.285	153.140	153.380	157.725
152.300	153.155	153.440	158.160
152.315	153.170	153.500	158.220
152.345	153.185	153.560	158.280
152.360	153.200	153.620	158.295
152.375	153.215	153.680	158.310
152.405	153.230	157.515	158.370
152.420	153.245	157.545	158.430
152.435	153.260	157.560	173.250
153.035	153.275	157.575	173.300
153.050	153.290	157.605	173.350
153.065	153.305	157.620	

¹Secondary frequency—see § 11.8 (1).

²Tertiary frequency—see § 11.8 (1).

³Available for assignment to stations in the Forest Products Radio Service within the States of Oregon and Washington only.

⁴Available for assignment to stations in the Forest Products Radio Service for use outside of Standard Metropolitan Areas of 50,000 or more population only.

b. Amend paragraph (a) of § 11.354 to read as follows:

§ 11.354 *Frequencies available for Base, Mobile and Operational Fixed Stations.* (a) The following frequency pairs are available for assignment to stations in the Forest Products Radio Service on a shared basis with certain other radio services in accordance with paragraph (b) of this section:

Frequency Pairs

Base and Mobile (Mc)	Mobile only (Mc)
451.55	456.55
451.60	456.60
451.65	456.65
451.70	456.70
451.75	456.75
451.80	456.80

c. Amend paragraph (b) preceding subparagraph (2) of § 11.354 to read as follows:

The frequencies listed in paragraph (a) of this section are available primarily for assignment to Base and Mobile Stations, and secondarily for assignment to Fixed Relay and Control Stations. Not more than one pair of frequencies will ordinarily be assigned for use by the stations of any single mobile service radio system, except upon adequate showing of need. Only one frequency of such pair will ordinarily be assigned to any Mobile Station and the lower frequency of that pair will not be assigned to such Mobile Station unless the system is designed for the single frequency method of operation and the same frequency is also assigned to an associated Base Station. An Operational Fixed Station to be operated as a part of a mobile service radio system may be assigned either of the paired frequencies available to the Base or Mobile Stations of the same mobile service radio system, subject however, to the following additional restrictions and limitations on assignment and use.

(1) All use by Operational Fixed Stations is subject to the condition that harmful interference shall not be caused to stations in the mobile service operating on these frequencies in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

d. Delete the text of paragraphs (c) and (d) of § 11.354 and substitute the following new paragraphs (c), (d) and (e):

(c) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Stations in the Forest Products Radio Service (on a shared basis with stations in certain other services), subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

Frequencies (Mc)
27.235
27.245
27.255
27.265
27.275

(d) Notwithstanding the provisions of § 11.103, stations authorized to be operated on the frequencies listed in paragraph (c) of this section may be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(e) Stations authorized to be operated on the frequencies listed in paragraph (c) of this section may also be authorized to be operated by self-actuating or other electrical or mechanical means not under the direct control of any individual: *Provided however*, That, whenever such unattended and uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.

7. Subpart I, Motion Picture Radio Service, is proposed to be amended in the following particulars: Delete the text of paragraphs (a), (b), (c) and (d) of § 11.404 and substitute the following:

§ 11.404 *Frequencies available for Base, Mobile and Operational Fixed Stations.* (a) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Station in the Motion Picture Radio Service (on a shared basis with stations in certain other services), subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc., and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

Frequencies (Mc)
27.235
27.245
27.255
27.265
27.275

(b) Notwithstanding the provisions of § 11.103, stations authorized to be operated on the frequencies listed in paragraph (a) of this section may be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(c) Stations authorized to be operated on the frequencies listed in paragraph (a) of this section may also be authorized to be operated thereon by self-actuating

or other electrical or mechanical means not under the direct control of any individual: *Provided however*, That whenever such unattended and uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.

8. Subpart J, Relay Press Radio Service, is proposed to be amended in the following particulars: Delete the text of paragraphs (a), (b), (c) and (d) of § 11.454 and substitute the following:

§ 11.454 *Frequencies available for Base, Mobile and Operational Fixed Stations.* (a) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Stations in the Relay Press Radio Service (on a shared basis with stations in certain other services), subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

Frequencies (Mc)
27.235
27.245
27.255
27.265
27.275

(b) Notwithstanding the provisions of § 11.103, stations authorized to be operated on the frequencies listed in paragraph (a) of this section may be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(c) Stations authorized to be operated on the frequencies listed in paragraph (a) of this section may also be authorized to be operated thereon by self-actuating or other electrical or mechanical means not under the direct control of any individual; *Provided, however*, That whenever such unattended and uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.

[F. R. Doc. 57-2883; Filed, Apr. 15, 1957; 8:46 a. m.]

[47 CFR Part 16]

[Docket No. 11992; FCC 57-357]

LAND TRANSPORTATION RADIO SERVICES NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of Part 16, Rules Governing the Land Transportation Radio Services, to implement "channel splitting" in the frequency range 152-162 Mc, and to sub-allocate the new frequencies thus made available.

1. Notice is hereby given of proposed rule making in the above-entitled matter.
2. By its Report and Order in Docket No. 11253 adopted on September 19, 1956 and published in the FEDERAL REGISTER OF

October 3, 1956 (21 F. R. 7569), the Commission adopted a basic policy with respect to the separation to be specified between assignable frequencies in the frequency range 152-162 Mc, established certain technical standards considered essential to the implementation thereof, and specified the dates and the conditions under which those standards become effective.

3. The Commission now proposes to amend Part 16 of its Rules to specify the "split-channel" frequencies in the range 152-162 Mc which are to become available for assignment to stations in the Land Transportation Radio Services, to indicate the specific Services in which those frequencies will be made available, and to set forth the conditions under which the assignment of those frequencies may be made to individual stations.

4. Accordingly, it is proposed that the new frequencies, which are obtained by reducing the required separation between assignable frequencies in these services, will become available for assignment in accordance with normal procedures on November 1, 1963, the date on which compliance with the new "narrow band" technical standards becomes necessary for all stations operating on frequencies in this range. It is further proposed that the assignment of "secondary" frequencies (those removed by 30 kc from the present or "primary" frequencies) may be made prior to that date on a case-by-case basis when the licensee of all stations operating on the adjacent primary frequencies within 75 miles of the location or area of operation of the proposed station concur with that assignment. Additionally, it is proposed that the "tertiary" frequencies (those removed by 15 kc from the primary and secondary frequencies) will be made available for assignment on November 1, 1963, but only when the proposed station location or area of operation is removed by at least 40 miles from the station location or area of operation of every station of any other licensee operating on the primary and secondary frequencies immediately adjacent thereto. Provision is made in the proposal, however, for the assignment of any frequency between the primary frequencies available to any given service, at any time, if certain conditions which include a showing with regard to the avoidance of interference, are met.

5. In the frequency band 159.48 to 161.85 Mc, now allocated to the Land Transportation Radio Services and sub-allocated to the Railroad Radio Service, it is proposed that the band 161.825 to 161.850 Mc be reallocated to the Maritime Mobile Radio Services, exclusive of stations located in Puerto Rico and the Virgin Islands, in order to make the frequency 161.85 Mc available for assignment to the maritime mobile service as a 50 kc channel, and that the band of frequencies 161.645 to 161.825 Mc be reallocated to remote pickup broadcast base and mobile stations, exclusive of stations located in Puerto Rico and the Virgin Islands. It should also be pointed out that in the event the Commission should determine that remote pickup stations require frequency separations

greater than 30 kc, it may be necessary to expand the allocation at approximately 161.645 Mc to remote pickup stations and to reduce the allocation to the Land Transportation Service at this order of frequency. At the present time remote pickup stations in Puerto Rico may use frequencies in the band 159.48-160.02 Mc on a shared basis with railroad radio stations. The proposed rules will provide for expansion of the Motor Carrier Radio Service into this band and continued sharing by remote pickup broadcast stations in Puerto Rico may become impractical. Therefore, it is proposed to delete the above sharing arrangement and substitute therefor, provision for the use of the frequency band 160.86-161.40 Mc by remote pickup stations in Puerto Rico and the Virgin Islands on a shared basis with the Railroad Radio Service. Administratively, the Commission will make assignments to remote pickup stations beginning at the upper end of the band. Assignments to railroad radio stations in Puerto Rico will not be made in this band until frequencies immediately below this band have been assigned. In addition, it is proposed that 13 primary frequencies from 159.51 to 160.260 Mc, together with the 13 secondary and 26 tertiary frequencies in that range be made available to the Motor Carrier Radio Service in lieu of the Railroad Radio Service. Of these, approximately one-half are proposed to be made available to the carriers of property operating between urban areas, and the remainder to the carriers of property engaged strictly in local pickup and delivery operations, in accordance with a concurrently proposed revision of the eligibility requirements in that service.

6. The Railroad Radio Service is proposed to retain a total of 23 primary, 22 secondary, and 46 tertiary frequencies in the range 160.275 to 161.645 Mc, except certain frequencies will be shared with remote pickup broadcast stations in Puerto Rico and the Virgin Islands. It should be noted that the frequencies in the range 161.40 to 161.85 Mc are allocated in Puerto Rico and the Virgin Islands exclusively to (a) aeronautical fixed service, (b) domestic public fixed service, and (c) international fixed public service. It should also be noted that it may become necessary to make the frequency 161.6 Mc available for assignment to the maritime mobile service, in keeping with the Baltic-North Sea Agreement (The Hague, 1957), in which case a further change of the above-proposed reallocation may also become necessary. Comments are being requested in a companion proceeding (Docket No. 11959) as to the desirability of providing for the assignment of the frequency 161.6 Mc to the maritime mobile services so as to make the United States allocation compatible with The Hague Agreement insofar as that frequency is concerned. The frequency, to be useful internationally would be needed on the basis of a 50 kc channel and would need protection from any harmful interference which might be caused by stations in the land mobile services. In The Hague Agree-

ment this frequency is paired with the frequency 157.00 Mc and is designated as the first choice for duplex port operation. The question involved in the companion proceeding (Docket No. 11959) is to determine whether such operation on these two frequencies would be desirable in the United States and its adjoining waters.

7. Additionally, it is proposed that the six secondary frequencies (consisting of three pairs of frequencies) midway between the existing frequencies allocated to the Taxicab Radio Service be also made available to that service, but only within Standard Metropolitan Areas of 50,000 or more population where a definite need for additional frequencies appears to exist. The matter of the possible availability of the tertiary frequencies in this range, as well as the availability of the secondary frequencies in areas outside those specified above, is not intended to be determined in this proceeding.

8. In addition to the foregoing, it is proposed that two narrow frequency bands, 157.4500-157.4625 Mc and 159.4800-159.4875 Mc, be made available for developmental operation in any of the Land Transportation Radio Services, and that three specific frequencies (157.470, 157.485, and 157.500 Mc), between the frequency band now allocated to the maritime mobile radio services and the frequencies presently available to the Taxicab Radio Service, be classified as secondary and tertiary frequencies, respectively, and be made available for assignment to stations in the Automobile Emergency Radio Service operated by or on behalf of public garages, to supplement the frequencies 35.70 and 35.98 Mc. This latter action appears appropriate in view of the fact that the frequencies 35.70 and 35.98 Mc are the only ones presently available for use by the operators of public garages who are experiencing excessive long-range interference on those frequencies due to operation of stations in other countries.

9. The foregoing amendments, which are set forth in detail below, are issued under authority of sections 4 (i) and 303 (a), (b), (c), (e), and (r) of the Communications Act of 1934, as amended.

10. Any interested person who is of the opinion that the proposed amendments should not be adopted or should not be adopted in the form set forth herein, and any person desiring to support the proposal, may file with the Commission on or before June 10, 1957, a written statement or brief setting forth his comments. Replies to such comments may be filed within ten days from the last date for filing original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

11. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: April 3, 1957.

Released: April 9, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Acting Secretary.

Proposed amendments to Part 16, Rules Governing the Land Transportation Radio Services:

1. It is proposed to amend § 16.8 by the addition of the following new paragraphs:

(f) In the frequency range 152-162 Mc, the basic spacing between the frequencies which are available for assignment is 60 kc; however, certain additional frequencies in that range have been made available to stations in specific services as a result of new technical standards which permit the closer spacing of assignable frequencies. These additional frequencies are separately designated in this part and are available for assignment under the following conditions only:

(1) The frequencies which are spaced by 30 kc from the primary frequencies (frequencies at the basic spacing) are designated as "secondary" frequencies and shall become available for assignment in accordance with normal procedures on November 1, 1963; however, assignment of a secondary frequency may be made prior to that date in those cases where either (i) the licensees of all stations operating on the adjacent primary frequencies within 75 miles of the proposed station or area of operation at the time application is made concur with an earlier assignment, or (ii) an acceptable engineering showing is made that the operation of the proposed station will not cause harmful interference to the operation of such other stations.

(2) The frequencies which are spaced by 15 kc from the primary or secondary frequencies are designated as "tertiary" frequencies and, other than as provided in paragraph (g) of this section, shall become available for assignment on November 1, 1963 in those cases where the location and area of operation of each proposed station is removed by at least 40 miles from the location and area of operation of every other station operating, at the time application is made, on the primary and secondary frequencies immediately adjacent thereto.

(3) All transmitting equipment of stations authorized to be operated on secondary or tertiary frequencies, in accordance with the foregoing provisions of this section, shall comply with the technical provisions of these rules which are applicable to transmitting equipment in use on or after November 1, 1963.

(g) In the frequency range 152-162 Mc, whenever all assignable frequencies

¹ Commissioners Hyde, Doerfer and Mack not participating. Concurring statement of Commissioner Bartley filed with the original document.

(including all secondary and tertiary frequencies) in a particular frequency band or segment thereof are available or are scheduled to be available for assignment to stations in the same service, any frequency within that band or segment of a band may be assigned to a station in that service on a developmental basis upon adequate showing of the need for such irregular assignment together with adequate showing that excessive interference will not be caused thereby to the operation of stations operated by other licensees.

2. It is proposed to amend subparagraph (4) of § 16.251 (a) to read as follows:

(4) Persons primarily engaged in providing a common or contract motor carrier transportation service for the local distribution or collection of property.

3. It is proposed to amend § 16.252 (e) to read as follows:

(e) Subject to the provisions of § 16.8 (f), the following secondary frequencies are available to the Motor Carrier Radio Service for assignment to Base and Mobile Stations of common or contract carriers of property engaged in the specified type of transportation activity:

(1) For common or contract carriers of property operating between urban areas:

Mc	Mc	Mc	Mc
* 159.495	* 159.600	* 159.705	* 159.810
* 159.510	* 159.615	* 159.720	* 159.825
* 159.525	* 159.630	* 159.735	* 159.840
* 159.540	* 159.645	* 159.750	* 159.855
* 159.555	* 159.660	* 159.765	* 159.870
* 159.570	* 159.675	* 159.780	
* 159.585	* 159.690	* 159.795	

* Secondary frequency—see § 16.8 (f).

* Tertiary frequency—see § 16.8 (f).

(2) For common or contract carriers of property operating solely within single urban areas:

Mc	Mc	Mc	Mc
* 159.885	* 159.990	* 160.095	* 160.200
* 159.900	* 160.005	* 160.110	* 160.215
* 159.915	* 160.020	* 160.125	* 160.230
* 159.930	* 160.035	* 160.140	* 160.245
* 159.945	* 160.050	* 160.155	* 160.260
* 159.960	* 160.065	* 160.170	
* 159.975	* 160.080	* 160.185	

* Secondary frequency—see § 16.8 (f).

* Tertiary frequency—see § 16.8 (f).

4. It is proposed to amend the table of frequencies appearing in § 16.352 (a) to read as follows:

Mc	Mc	Mc	Mc
* 160.275	* 160.575	* 160.875	* 161.175
* 160.290	* 160.590	* 160.890	* 161.190
* 160.305	* 160.605	* 160.905	* 161.205
* 160.320	* 160.620	* 160.920	* 161.220
* 160.335	* 160.635	* 160.935	* 161.235
* 160.350	* 160.650	* 160.950	* 161.250
* 160.365	* 160.665	* 160.965	* 161.265
* 160.380	* 160.680	* 160.980	* 161.280
* 160.395	* 160.695	* 160.995	* 161.295
* 160.410	* 160.710	* 161.010	* 161.310
* 160.425	* 160.725	* 161.025	* 161.325
* 160.440	* 160.740	* 161.040	* 161.340
* 160.455	* 160.755	* 161.055	* 161.355
* 160.470	* 160.770	* 161.070	* 161.370
* 160.485	* 160.785	* 161.085	* 161.385
* 160.500	* 160.800	* 161.100	* 161.400
* 160.515	* 160.815	* 161.115	* 161.415
* 160.530	* 160.830	* 161.130	* 161.430
* 160.545	* 160.845	* 161.145	* 161.445
* 160.560	* 160.860	* 161.160	* 161.460

Mc	Mc	Mc	Mc
* 161.475	* 161.520	* 161.565	* 161.610
* 161.490	* 161.535	* 161.580	* 161.625
* 161.505	* 161.550	* 161.595	

* Secondary frequency—see § 16.8 (f).

* Tertiary frequency—see § 16.8 (f).

* In Puerto Rico and the Virgin Islands only, these frequencies are not available to stations operating in the Railroad Radio Service.

* This frequency is available on a shared basis with remote pickup broadcast stations in Puerto Rico and the Virgin Islands.

5. It is proposed to amend the table of frequencies appearing in § 16.402 (b) to read as follows:

Base and Mobile (Mc)	Mobile only (Mc)
* 152.27	* 157.53
* 152.30	* 157.56
* 152.33	* 157.59
* 152.36	* 157.62
* 152.39	* 157.65
* 152.42	* 157.68
* 152.45	* 157.71

* Secondary frequency—see § 16.8 (f).

* These frequencies are available only for assignment to Base or Mobile Stations operated wholly within Standard Metropolitan Areas having 50,000 or more population.

6. It is proposed to amend § 16.503 by the addition of the following new paragraph:

(c) The following frequencies are available to the Automobile Emergency Radio Service for assignment to base stations and to mobile stations other than those aboard aircraft, which are operated by or on behalf of public garages: *Provided*, That only one of these frequencies shall be assigned to the stations of any single licensee operated in any one general area:

Frequencies (Mc)

* 157.470
* 157.485
* 157.500

* Secondary frequency, see § 16.8 (f).

* Tertiary frequency, see § 16.8 (f).

7. It is proposed to amend § 16.204 to read as follows:

§ 16.204 *Frequencies available for assignment.* (a) Stations engaged in developmental operation may be authorized to use a frequency, or frequencies, available for the particular service in which they propose to operate. The number of channels assigned will depend upon the specific requirements of the developmental program and the number of frequencies available in the particular area where the station will be operated.

(b) The following frequency bands are available for assignment to base and mobile stations in any of the Land Transportation Radio Services for developmental operation only, using any type of emission: *Provided*, That, the band of frequencies occupied by the emission of each such station shall be at all times confined within the respective band:

Frequency bands (Mc)

157.4500-157.5625
159.4800-159.4875

[F. R. Doc. 57-2884; Filed, Apr. 15, 1957; 8:46 a. m.]

[47 CFR Part 16]

[Docket No. 11993; FCC 57-358]

LAND TRANSPORTATION RADIO SERVICES

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of Part 16, Rules Governing the Land Transportation Radio Services, to make additional frequencies in the bands 27.23-27.28 Mc and 450-460 Mc available for assignment.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission proposes to amend the tables of available frequencies contained in Part 16 of its Rules, to the extent that additional frequencies in the range 450-460 Mc will be made available, separated by 50 kc in lieu of the previous 100 kc spacing, in keeping with the technical standards applicable to transmitters operated in that range as established in Docket No. 11253 (the "split-channel" proceeding). It is also proposed that the frequencies presently shared by the Motor Carrier Radio Service and the Railroad Radio Service be sub-allocated between these services and that all frequencies available to these services in the 450-460 Mc range be made available on a regular rather than on a developmental basis as heretofore. This latter action is intended, among other things, to be responsive to the Resolution of the Southern California Radio Taxicab Association dated January 3, 1956, and received by the Commission on February 28, 1956, which is hereby made a part of the record of this proceeding by reference.

3. The Commission further proposes to make available specific "split-channel" frequencies in the 27.23-27.28 Mc portion of the ISM band 26.96-27.28 Mc, to supplement the frequency 27.255 Mc. In addition, it is proposed to limit the characteristics of the emissions of stations operating on frequencies in that range in these services, in keeping with the proposed spacing between the assignable frequencies.

4. The foregoing amendments, which are set forth in detail below, are issued under the authority of sections 4 (i) and 303 (a), (b), (c), (e), and (r) of the Communications Act of 1934, as amended.

5. Any interested person who is of the opinion that the proposed amendments should not be adopted or should not be adopted in the form set forth herein, and any person desiring to support this proposal, may file with the Commission on or before June 10, 1957, a written statement or brief setting forth his comments. Replies to such comments may be filed within ten days from the last date for filing original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

6. In accordance with the provisions of § 1.764 of the Commission's Rules and

Regulations, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: April 3, 1957.

Released: April 9, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Acting Secretary.

Proposed amendments of Part 16, Rules Governing the Land Transportation Radio Services:

1. It is proposed to amend paragraph (f) of § 16.252 to read as follows:

(f) The following frequency pairs are available to the Motor Carrier Radio Service for assignment to Base or Mobile Stations, on a shared basis with other stations in the same service: *Provided*, That a Mobile Station may be assigned the frequency of an associated Base Station, in lieu of the Mobile frequency paired therewith in accordance with the following table, when the mobile service system is designed for the single frequency method of operation:

Frequency Pairs

<i>Base only (Mc)</i>	<i>Mobile only (Mc)</i>
452.65	457.65
452.70	457.70
452.75	457.75
452.80	457.80

2. It is proposed to amend § 16.254 to read as follows:

§ 16.254 *Frequencies available for Base, Mobile and Operational Fixed Stations.* (a) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Stations (other than Control Stations) in the Motor Carrier Radio Service, on a shared basis with stations in the same service and other services, subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

<i>Frequencies (Mc)</i>
27.235
27.245
27.255
27.265
27.275

(b) Notwithstanding the provisions of § 16.103, stations authorized to be operated on the frequencies listed in paragraph (a) of this section may only be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(c) Stations authorized to be operated on the frequencies listed in paragraph (a) of this section may also be authorized to be operated by self-actuating or other mechanical or electrical means not under the direct control of an individual: *Provided, however*, That whenever such unattended and uncontrolled operation is

authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.

(d) No station shall be operated in this service on any of the frequencies listed in paragraph (a) of this section for the purpose of controlling the emission of any station operating on any other frequency.

3. It is proposed to amend paragraph (c) of § 16.352 to read as follows:

(c) The following frequency pairs are available to the Railroad Radio Service for assignment to Base or Mobile Stations, on a shared basis with other stations in the same service: *Provided*, That a Mobile Station may be assigned the frequency of an associated Base Station, in lieu of the Mobile frequency paired therewith in accordance with the following table, when the mobile service system is designed for the single frequency method of operation:

Frequency Pairs

<i>Base only (Mc)</i>	<i>Mobile only (Mc)</i>
452.85	457.85
452.90	457.90
452.95	457.95

4. It is proposed to amend § 16.356 to read as follows:

§ 16.356 *Frequencies available for Base, Mobile, and Operational Fixed Stations.* (a) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Stations (other than Control Stations) in the Railroad Radio Service, on a shared basis with stations in the same service and other services, subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

<i>Frequencies (Mc)</i>
27.235
27.245
27.255
27.265
27.275

(b) Notwithstanding the provisions of § 16.103, stations authorized to be operated on the frequencies listed in paragraph (a) of this section may only be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(c) Stations authorized to be operated on the frequencies listed in paragraph (a) of this section may also be authorized to be operated by self-actuating or other mechanical or electrical means not under the direct control of an individual: *Provided, however*, That whenever such unattended or uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.

(d) No station shall be operated in this service on any of the frequencies listed in paragraph (a) of this section for the

purpose of controlling the emission of any station operating on any other frequency.

5. It is proposed to amend paragraph (c) of § 16.402 to read as follows:

(c) The following frequency pairs are available for assignment to Base Stations or Mobile Stations in the Taxicab Radio Service, on a shared basis with other stations in the same service: *Provided*, That a Mobile Station may be assigned the frequency of an associated Base Station, in lieu of the Mobile frequency paired therewith in accordance with the following table, when the mobile service system is designed for the single frequency method of operation:

Frequency Pairs

<i>Base only (Mc)</i>	<i>Mobile only (Mc)</i>
452.05	457.05
452.10	457.10
452.15	457.15
452.20	457.20
452.25	457.25
452.30	457.30
452.35	457.35
452.40	457.40
452.45	457.45
452.50	457.50

6. It is proposed to amend § 16.404 to read as follows:

§ 16.404 *Frequencies available for Base, Mobile, and Operational Fixed Stations.* (a) The following frequencies are available for assignment to Base, Mobile, or Operational Fixed Stations (other than Control Stations) in the Taxicab Radio Service, on a shared basis with stations in the same service and other services, subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

<i>Frequencies (Mc)</i>
27.235
27.245
27.255
27.265
27.275

(b) Notwithstanding the provisions of § 16.103, stations authorized to be operated on the frequencies listed in paragraph (a) of this section may only be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(c) Stations authorized to be operated on the frequencies listed in paragraph (a) of this section may also be authorized to be operated by self-actuating or other mechanical or electrical means not under the direct control of any individual: *Provided, however*, That whenever such unattended or uncontrolled operation is authorized, adequate means shall be provided to prevent the unauthorized transmission of communications or signals.

(d) No station shall be operated in this service on any of the frequencies listed in paragraph (a) of this section for the purpose of controlling the emission of any station operating on any other frequency.

¹ Commissioners Hyde, Doerfer and Mack not participating. Concurring statement of Commissioner Bartley filed with the original document.

7. It is proposed to delete paragraph (b) of § 16.503 and substitute the following:

(b) The following frequency pair is available for assignment to Base Stations and Mobile Stations in the Automobile Emergency Radio Service which are operated by public garages: *Provided*, That a Mobile Station may be assigned the frequency of an associated Base Station, in lieu of the Mobile frequency specified in the following table, when the mobile service system is designed for the single frequency method of operation:

Base only (Mc)	Mobile only (Mc)
452.60	457.60

(c) The following frequency pair is available for assignment to Base Stations and Mobile Stations in the Automobile Emergency Radio Service which are operated by or on behalf of associations of owners of private automobiles: *Provided*, That a Mobile Station may be assigned the frequency of an associated Base Station, in lieu of the Mobile frequency specified in the following table, when the mobile service system is designed for the single frequency method of operation:

Base only (Mc)	Mobile only (Mc)
452.55	457.55

8. It is proposed to amend § 16.504 to read as follows:

§ 16.504 *Frequencies available for Base, Mobile and Operational Fixed Stations.* (a) The following frequencies are available for assignment to Base, Mobile or Operational Fixed Station (other than Control Stations) in the Automobile Emergency Radio Service on a shared basis with stations in the same service and other services, subject to no protection from interference due to the operation of industrial, scientific, or medical devices on the frequency 27.12 Mc, and limited to the use of transmitters having not more than 30 watts plate power input to the final radio frequency stage:

Frequencies Mc
27.235
27.245
27.255
27.265
27.275

(b) Notwithstanding the provisions of § 16.103, stations authorized to operate on the frequencies listed in paragraph (a) of this section may only be authorized to transmit thereon any type of emission which occupies a bandwidth not greater than 8 kc.

(c) Stations authorized to be operated on the frequencies listed in paragraph (a) of this section may also be authorized to be operated by self-actuating or other mechanical or electrical means not under the direct control of any individual: *Provided, however*, That whenever such unattended or uncontrolled operation is authorized, adequate means shall be provided to prevent the transmission of a carrier wave except when modulated for the purpose of transmitting authorized communications or signals.

(d) No station shall be operated in this service on any of the frequencies listed in paragraph (a) of this section

for the purpose of controlling the emission of any station operating on any other frequency.

[F. R. Doc. 57-2885; Filed, Apr. 15, 1957; 8:46 a. m.]

[47 CFR Parts 12, 19]

[Docket No. 11994; FCC 57-359]

AMATEUR RADIO SERVICE; CITIZENS RADIO SERVICE

NOTICE OF PROPOSED RULE MAKING

In the matter of complete revision of Part 19, Rules Governing the Citizens Radio Service, and reallocation of frequencies in the range 26.96-27.23 Mc from the Amateur Radio Service (Part 12) to the Citizens Radio Service.

1. Notice is hereby given of proposed rule making in the above entitled matter.

2. The Citizens Radio Service was originally established with the intention of providing for private short-distance radio communications, for radio signaling, or for the remote control of objects or devices by radio, to be used by individuals as well as by commercial concerns. However, the actual growth of the service has progressed primarily along the lines followed by the various Industrial and Land Transportation Radio Services, although subject to fewer restrictions as to station location or usage, and lacking any requirement of a definite frequency selection in the available band (except Class C stations). With the development of equipment capable of reliable operation in the 460-470 Mc band, many persons have obtained authorizations for Class A stations in this service as a means of meeting the mobile and point-to-point communications needs of their respective industrial activities or other commercial enterprises which could not then be served by facilities licensed in the Industrial or Land Transportation Radio Services.

3. By separate proceedings (Docket Nos. 11959 and 11991¹), the Commission proposes to reallocate 1 Mc of the band 460-470 Mc to the Domestic Public Radio Service and 8.45 Mc of the band to the Industrial Radio Services in keeping with concurrently proposed changes in that Service. Only the frequencies between 464.725 Mc and 465.275 Mc would remain available to the Citizens Radio Service.

4. The Commission recognizes that many individuals will continue to desire the use of the Citizens Radio Service to provide for short-distance radio communication, for radio signaling, and for the remote control of objects or devices by radio; in fact, representations made by and on behalf of the Academy of Model Aeronautics indicates a substantial need for additional frequencies in the 27 Mc range for use in the remote control of such objects or devices as model aircraft by radio. It is also recognized that not all persons now holding authorizations for Class A stations in the Citizens Radio Service will be able to establish eligibility in any of the Indus-

trial or Land Transportation Radio Services, even if the proposed changes are consummated in those services. Accordingly, it is proposed in this proceeding that frequencies in the band 26.96 to 27.23 Mc be reallocated from the Amateur Radio Service to the Citizens Radio Service, for use by Class A and Class C stations only. It is further proposed that the frequency 465 Mc be retained for use by Class B stations, as at present but under more stringent technical requirements, and that the other frequencies at 50 kc spacing in the band 464.725-465.275 Mc be made available to Class A stations. Additionally, it is proposed that the requirement for "type-approval" of equipment to be utilized by Class A stations be changed to a requirement that such equipment shall be of a type which has been accepted for licensing in this service, and that the specific frequency to be used by a Class A or a Class C station will be specified on the station authorization. It may be noted that the requirement regarding "type-approved" equipment for Class B and Class C stations (other than crystal-controlled Class C stations) is retained.

5. Reallocation of the frequency band 26.96-27.23 Mc from the Amateur Radio Service to the Citizens Radio Service at this time appears appropriate for several reasons. First, the frequency band is a part of the larger frequency band 26.96-27.28 Mc within which interference may normally be expected and must be accepted from industrial, scientific and medical (ISM) devices operating on the frequency 27.12 Mc. Secondly, because of the foregoing, it appears that normal amateur operation in this region of the spectrum is and has been confined primarily to the internationally recognized amateur band 28.0-29.7 Mc, and that amateur operation in the 26.96-27.23 Mc band has been almost exclusively the type of operation which would still be permitted on those frequencies under the Citizens Radio Service; namely, the remote control of objects or devices by radio or short-distance radio communication. In addition, since licensed amateurs, as individuals, will be able to obtain personal licenses in the Citizens Radio Service for either radio control or voice communication in this band, it appears that very few privileges in connection with this frequency band will be taken from them. On the other hand, a need for a means of short-range voice communications for personal use by any individual, as well as a need for additional spectrum space for general use for radio remote control purposes, on frequencies in the 27 Mc range, appears to have been demonstrated. The rule changes proposed herewith, among other things, are designed to produce those effects.

6. Accordingly, the Commission proposes to amend its rules to accomplish the following major changes:

(1) To completely revise the Rules Governing the Citizens Radio Service.

(2) To provide for "type-acceptance" rather than "type-approval" of equipment for use by Class A stations in the Citizens Radio Service.

(3) To provide new frequencies for the Citizens Radio Service in the frequency

¹ See F. R. Docs. 57-2881 and 57-2883, supra.

band 26.96-27.23 Mc, in addition to the presently available frequency 27.255 Mc.

(4) To delete the availability of frequencies in the bands 460.000-464.725 Mc and 465.275-470.000 Mc to the Citizens Radio Service.

(5) To delete the availability of frequencies in the band 26.96-27.23 Mc to the Amateur Radio Service.

(6) To provide for the assignment of specific frequencies to Class A and Class C Citizens Radio Stations, in addition to the assignment of the single frequency 465 Mc to Class B Citizens Radio Stations.

7. Pending in the Commission's files is a petition filed on January 23, 1957 by the Academy of Model Aeronautics (Academy). The petition requests amendment of Parts 2, 7, 10, 11, 16 and 19 of the Commission's Rules to provide relief from interference conditions on 27.255 Mc by reallocating assignments within the band 27.23-27.28 Mc to provide an offset of 18 kilocycles between Class C, Citizens Radio stations and other services, to permit the radio control of models and objects on all frequencies assigned to the Industrial, Scientific and Medical Service, to permit the assignment 460-470 Mc band frequencies to Class C stations, and to assign a frequency or band of frequencies above 300 Mc exclusively for the control of objects or devices by radio. To the extent that the above petition can be said to be at variance with what is proposed herein, it will be considered in any disposition of this proceeding. Such additional comments as may be submitted by the Academy will also be considered.

8. On December 19, 1956, the Commission adopted a Notice of Proposed Rule Making (Docket No. 11895) to amend Part 19, Rules Governing the Citizens Radio Service, by deleting the Note to § 19.12. The time for filing comments thereto has expired. Comments on the above-mentioned proposal have been received from the American Trucking Associations, Inc., the Radio Specialists Company and the Kaar Engineering Corporation. Inasmuch as the instant proceeding contemplates a complete revision of Part 19, including the removal of the present Note to § 19.12, Docket No. 11895 is merged into this proceeding, and the comments filed thereto will be considered in any disposition of this proceeding.

9. The proposed amendments to Parts 12 and 19 are set forth below. They are issued under the authority of sections 4 (i) and 303 of the Communications Act of 1934, as amended.

10. Any interested person who is of the opinion that the proposed amendments should not be adopted or should not be adopted in the form set forth herein, and any person desiring to support this proposal, may file with the Commission on or before June 10, 1957, a written statement or brief setting forth his comments. Replies to such comments may be filed within ten days from the last date for filing original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will con-

sider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

11. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: April 3, 1957.

Released: April 9, 1957.

FEDERAL COMMUNICATIONS

COMMISSION,²

[SEAL] BEN F. WAPLE,
Acting Secretary.

Proposed amendments to Part 12, Rules Governing the Amateur Radio Service:

1. It is proposed to delete paragraph (f) of § 12.111 and substitute the following:

(f) [Reserved.]

2. It is proposed to amend § 12.134 to read as follows:

§ 12.134 *Modulation of carrier wave.* Except for brief tests or adjustments, an amateur radiotelephone station shall not emit a carrier wave on frequencies below 51 megacycles unless modulated for the purpose of communication.

Proposed revision of Part 19, Citizens Radio Service:

It is proposed to delete the entire text of Part 19 and substitute the following:

PART 19—CITIZENS RADIO SERVICE

Subpart A—General

- | | |
|------|---|
| Sec. | |
| 19.1 | Basis and purpose. |
| 19.2 | Definitions. |
| 19.3 | Policy governing the assignment of frequencies. |
| 19.4 | General citizenship restrictions. |

Subpart B—Applications and Licenses

- | | |
|-------|--|
| 19.11 | Station authorization required. |
| 19.12 | Eligibility for station license. |
| 19.13 | Filing of applications. |
| 19.14 | Who may sign applications. |
| 19.15 | Standard forms to be used. |
| 19.16 | Partial grant. |
| 19.17 | Defective applications. |
| 19.18 | Amendment or dismissal of application. |
| 19.19 | License period. |
| 19.20 | Changes in authorized stations. |
| 19.21 | Limitation in antenna structures. |

Subpart C—Technical Standards

- | | |
|-------|---|
| 19.31 | Frequencies available. |
| 19.32 | Station power. |
| 19.33 | Frequency tolerance. |
| 19.34 | Types of emission. |
| 19.35 | Emission limitations. |
| 19.36 | Modulation limitations. |
| 19.37 | Technical measurements. |
| 19.38 | Acceptability of transmitters for licensing. |
| 19.39 | Type of acceptance of equipment. |
| 19.40 | Submission of Class B and non-crystal controlled Class C station equipment for type approval. |
| 19.41 | Minimum equipment specifications. |
| 19.42 | Test procedure. |
| 19.43 | Certificate of type approval. |
| 19.44 | Acceptance of composite equipment. |

² Commissioners Hyde, Doerfer, and Mack not participating. Concurring statement of Commissioner Bartley filed with the original document.

Subpart D—Station Operating Requirements

- | | |
|-------|---|
| Sec. | |
| 19.51 | Permissible communications. |
| 19.52 | Station identification. |
| 19.53 | Remote control. |
| 19.54 | Suspension of transmissions required. |
| 19.55 | Operator requirements. |
| 19.56 | Posting of station licenses. |
| 19.57 | Inspection of stations. |
| 19.58 | Inspection and maintenance of tower marking and associated control equipment. |
| 19.59 | Answers to notices of violations. |
| 19.60 | Recording of tower light inspections. |
| 19.61 | False signals. |
| 19.62 | Station location. |
| 19.63 | Control of transmitters. |
| 19.64 | Civil defense communications. |

SUBPART A—GENERAL

§ 19.1 *Basis and purpose.* The following rules and regulations are issued pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmissions and to issue licenses for radio stations. The rules in this part are designed to provide for private short-distance radiocommunications, radio-signalling, and the control of remote objects or devices by means of radio, and to provide procedures whereby manufacturers of radio equipment to be used or operated in the Citizens Radio Service may obtain type acceptance and/or type approval of such equipment as may be appropriate.

§ 19.2 *Definitions.* For the purpose of this part, the following definitions shall be applicable. For other definitions, refer to Part 2, Rules Governing Frequency Allocations and Treaty Matters; General Rules and Regulations, of this chapter.

(a) *Citizens Radio Service.* A fixed and mobile radio service intended for personal or business radiocommunication, radio signalling, control of remote objects or devices by means of radio, and other purposes not specifically prohibited in this part.

(b) *Mobile service.* A service of radiocommunication between mobile and land stations or between mobile stations.

(c) *Land station.* A station in the mobile service not intended for operation while in motion.

(d) *Mobile station.* A station in a mobile service intended to be used while in motion or during halts at unspecified points. (For purposes of this part, the term includes hand-carried and pack-carried units).

(e) *Assigned frequency.* The frequency appearing on a station authorization, from which the carrier frequency may deviate by an amount not to exceed that permitted by the frequency tolerance.

(f) *Authorized bandwidth.* The maximum width of the band of frequencies, as specified in the authorization, to be occupied by an emission.

(g) *Bandwidth occupied by an emission.* The width of the frequency band (normally specified in kilocycles) containing those frequencies upon which a total of 99 percent of the radiated power appears, extended to include any discrete frequency upon which the power is at

least 0.25 percent of the total radiated power.

(h) *Station authorization.* Any construction permit, license, or special temporary authorization issued by the Commission.

(i) *Class A citizens station.* The term "Class A citizens station" means a citizens radio station intended only for the transmission and reception of voice radiotelephone communications, and authorized to be operated on an assigned frequency in accordance with the provisions of § 19.31.

(j) *Class B citizens station.* The term "Class B citizens station" means a citizens radio station intended for the transmission and reception of voice radiotelephone communications, for the remote control of objects or devices, or for the actuation of devices which are used as a means of attracting attention, and authorized to be operated on the frequency 465 Mc only.

(k) *Class C citizens station.* The term "Class C citizens station" means a citizens radio station intended only for the remote control of objects or devices by radio, or for the actuation of devices which are used solely as a means of attracting attention, and authorized to be operated on any one of the group of frequencies specified in § 19.31.

(l) *Landing area.* A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(m) *Antenna structure.* The term "antenna structure" includes the radiating system and its supporting structures.

(n) *Fixed service.* A service of radio-communication between specified fixed points.

(o) *Fixed station.* A station in the fixed service.

(p) *Harmful interference.* Any radiation or any induction which endangers the functioning of a radionavigation service or of a safety service or obstructs or repeatedly interrupts a radio service operating in accordance with applicable laws, treaties and regulations.

(q) *Base station.* A land station in the land mobile service carrying on a service with land mobile stations.

§ 19.3 *Policy governing the assignment of frequencies.* (a) The frequencies which may be assigned to stations in the Citizens Radio Service are listed in Subpart C of this part. All applicants for and licensees of, stations in these services shall cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. Each frequency available for assignment to stations in this service is available on a shared basis only, and will not be assigned for the exclusive use of any one applicant; such use may also be restricted to one or more specified geographical areas.

(b) In no case will more than one frequency be assigned to Class A stations for

the use of a single applicant until it has been demonstrated conclusively to the Commission that the assignment of an additional frequency is essential to the operation proposed.

§ 19.4 *General citizenship restrictions.* A station license may not be granted to or held by:

(a) Any alien or the representative of any alien;

(b) Any foreign government or the representative thereof;

(c) Any corporation organized under the laws of any foreign government;

(d) Any corporation of which any officer or director is an alien;

(e) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: Aliens or their representatives; a foreign government or representative thereof; or any Corporation organized under the laws of a foreign country;

(f) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license; or

(g) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by: Aliens or their representatives; a foreign government or representatives thereof; or any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

SUBPART B—APPLICATIONS AND LICENSES

§ 19.11 *Station authorization required.* No radio station shall be operated in the Citizens Radio Service except under and in accordance with an authorization granted by the Federal Communications Commission.

§ 19.12 *Eligibility for station license.* Subject to the general restrictions of § 19.4, any person is eligible to hold authorizations to operate stations in the Citizens Radio Service: *Provided*, That if the applicant is an individual or partnership, such individual or each partner is eighteen or more years of age: *Provided further*, That not more than one person shall be eligible as licensee of the same transmitting equipment.

NOTE: While the basis of eligibility in this service includes any state, territorial, or local government entity or any organization or association operating by the authority of such governmental entity, including any duly authorized state, territorial or local civil defense organization, it should be noted that the frequencies available to stations in this service are shared without distinction between all licensees and that no protection can be afforded to the communications of any station in this service, even when involving the protection of life or property, from interference which may be caused by the operation of other authorized stations.

§ 19.13 *Filing of applications.* (a) To assure that necessary information is supplied in a consistent manner by all persons, standard forms are prescribed for use in connection with the majority

of applications and reports submitted for Commission consideration. Standard numbered forms applicable to the Citizens Radio Service are discussed in § 19.15 and may be obtained from the Washington 25, D. C. office of the Commission, or from any of its engineering field offices.

(b) An application for Class A or Class B radio station authorization and all correspondence relating thereto shall be submitted to the Commission's office at Washington 25, D. C., and should be directed to the attention of the Secretary.

(c) An application for a Class C station authorization proposing to employ type approved equipment, or a Class C station authorization proposing to employ crystal controlled equipment, and all correspondence relating thereto shall be submitted to one of the Engineering Field Offices of the Commission: *Provided, however*, That when such an application is required to be accompanied by FCC Form 401-A, it shall be submitted instead to the Commission's office at Washington 25, D. C., and should be directed to the attention of the Secretary. Applications involving Class C station equipment which is neither type approved nor crystal controlled, whether of commercial or home construction, shall be submitted only to the Commission's office at Washington 25, D. C. Such applications shall be accompanied by supplemental data describing in detail the design and construction of the transmitter and the methods employed in testing it to determine compliance with the technical requirements set forth elsewhere in this part.

(d) Unless otherwise specified, an application shall be filed at least sixty days prior to the date on which it is desired that Commission action thereon be completed.

(e) Failure on the part of the applicant to provide all the information required by the application form, or to supply the necessary exhibits or supplementary statements may constitute a defect in the application.

§ 19.14 *Who may sign applications.* The application for an authorization shall be signed under oath or affirmation by the applicant if the applicant be an individual; or by any one of the partners if an applicant be a partnership; or by an officer if the applicant be a corporation; or by a member who is an officer if the applicant be an unincorporated association: *Provided, however*, That applications may be signed by the attorney for an applicant (a) in case of physical disability of the applicant, or (b) his absence from the continental United States. If it be made by a person other than the applicant, he must set forth in the verification the grounds of his belief as to all matters not stated upon his knowledge and the reason why it is not made by the applicant.

§ 19.15 *Standard forms to be used.* (a) FCC Form 505, application for Citizens Radio Station Construction Permit and License: This form shall be used when:

(1) Application is made for a new station;

(2) Application is made for renewal or modification of any existing authorization;

(3) Whenever it is proposed to make any change which would be inconsistent with the terms of the existing station authorization, as outlined in § 19.20.

(b) FCC Form 401-A, Description of Proposed Antenna Structures: This form shall be executed in triplicate and attached to any application, FCC Form 505 (see paragraph (a) of this section) for new or modified station authorization in each case where the antenna structure falls within either of the following situations:

(1) The antenna structures proposed to be erected will exceed an over-all height of 170 feet above ground level, except that where the antenna is mounted on top of an existing man-made structure, other than an antenna structure, and does not increase the over-all height of such man-made structure by more than 20 feet, no Form 401-A need be filed; or

(2) The antenna structures proposed to be erected will exceed an over-all height of one foot above the established airport (landing area) elevation for each 200 feet of distance or fraction thereof from the nearest boundary of such landing area, except that where the antenna does not exceed 20 feet above the ground or if the antenna is mounted on top of an existing man-made structure, other than an antenna structure, or natural formation and does not increase the over-all height of such man-made structure or natural formation by more than 20 feet, no Form 401-A need be filed.

(c) Unless otherwise directed by the Commission, each application for renewal of license shall be filed during the last 60 days of the license term. In any case in which the licensee has, in accordance with the Commission's rules made timely and sufficient application for renewal of license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined.

§ 19.16 *Partial grant.* Where the Commission, without a hearing, grants an application in part, or with any privileges, terms or conditions other than those requested, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 20 days from the date on which public announcement of such grant is made, or from its effective date if a later date is specified, file with the Commission a written request, rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and, if necessary, set the application for hearing.

§ 19.17 *Defective applications.* (a) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

(b) When an application is considered to be incomplete or defective, such ap-

plication will be returned to the applicant, unless the Commission may otherwise direct. The reason for return of the applications will be indicated, and if appropriate, necessary additions or corrections will be suggested.

§ 19.18 *Amendment or dismissal of application.* Any application may be amended or dismissed without prejudice upon request of the applicant prior to the time the application is granted or designated for hearing. Each amendment to, or request for dismissal of, an application shall be signed, authenticated, and submitted in the same manner and with the same number of copies as required for the original application. All related correspondence or other material which is to be considered as a part of an application already filed shall be submitted in the form of an amendment to the application concerned.

§ 19.19 *License period.* Unless otherwise stated in the authorization, licenses for all stations in the Citizens Radio Service will be issued for a term of five years from the date of issuance.

§ 19.20 *Changes in authorized stations.* Authority for certain changes in authorized stations must be obtained from the Commission before the changes are made, while other changes do not require prior Commission approval. The following paragraphs describe the conditions under which prior Commission approval is or is not necessary.

(a) Proposed changes which will result in operation inconsistent with any of the terms of the current authorization require that an application for modification of license be submitted to the Commission. Application for modification shall be submitted in the same manner as an application for a new station on FCC Form 505, and the licensee shall forward his existing authorization to the Commission for cancellation. Any of the following changes to authorized stations may be made only upon approval by the Commission:

(1) Change the permanent address of the station licensee.

(2) Change the presently authorized location of a fixed transmitter or control point.

(3) Move, change the height of, or erect an antenna structure of the type which requires prior approval from the Commission as set forth in Section 19.21 and each request for approval must be accompanied by an FCC Form 401-A.

(4) Increase the over-all number of transmitters authorized.

(5) Make changes of any nature which may affect the operational characteristics of the transmitting equipment.

(6) Addition or deletion of control point(s) for presently authorized transmitter.

(7) Change or increase in the area of operation of a Class A Station.

(8) Change the operating frequency of a Class A or Class C Station.

(b) Proposed changes which will not depart from any of the terms of the outstanding authorization for the station involved may be made without prior Commission approval. Included in such changes is the substitution of various makes of transmitting equipment at any

station provided that the particular equipment to be installed is included in the Commission's "Radio Equipment List, Part C, List of Equipment Acceptable for Licensing" and provided the substitute equipment employs the same type of emission and does not exceed the power limitations as set forth in the station authorization.

§ 19.21 *Limitation on antenna structures.* (a) No new antenna or antenna structures shall be erected for use by any station licensed or proposed to be licensed in this service, and no change shall be made in any existing antenna or antenna structures for use or intended to be used by any station licensed or proposed to be licensed in this service so as to increase its overall height above ground level, without prior approval from the Commission in any case when either:

(1) The antenna structures proposed to be erected will exceed an overall height of 170 feet above ground level, except where the antenna is mounted on top of an existing manmade structure, other than an antenna structure, and does not increase the overall height of such manmade structure by more than 20 feet; or

(2) The antenna structures proposed to be erected will exceed an over-all height of one foot above the established airport (landing area) elevation for each 200 feet of distance, or fraction thereof, from the nearest boundary of such landing area, except where the antenna does not exceed 20 feet above the ground or if the antenna is mounted on top of an existing manmade structure, other than an antenna structure, or natural formation and does not increase the over-all height of such manmade structure or natural formation by more than 20 feet. Application for Commission approval, if required, shall be submitted on FCC Form 401-A.

(b) In cases where an FCC Form 401-A is required to be filed, further details as to whether an aeronautical study and/or obstruction marking may be required, as well as specifications for obstruction marking when required, may be obtained from Part 17, Construction, Marking and Lighting of Antenna Structures, of this chapter.

SUBPART C—TECHNICAL STANDARDS

§ 19.31 *Frequencies available.* Frequencies are available for assignments to stations in the Citizens Radio Service in accordance with the following: (a) For use by Class A Mobile stations on a shared basis with other stations in the Citizens Radio Service, subject to no protection from interference due to the operation of industrial, scientific and medical devices on the frequency 27.12 Mc:

Mc	Mc	Mc	Mc
26.965	27.035	27.115	27.185
26.975	27.055	27.125	27.205
26.985	27.065	27.135	27.215
27.005	27.075	27.155	27.225
27.015	27.085	27.165	
27.025	27.105	27.175	

(b) For use by Class A Base, Mobile and Fixed stations, on a shared basis with other stations in the Citizens Radio Service:

Mc	Mc	Mc	Mc
464.75	464.90	465.10	465.25
464.80	464.95	465.15	
464.85	465.05	465.20	

(c) The frequency 465.00 Mc is available for use by Class B Base, Mobile and Fixed Stations on a shared basis with other stations in the Citizens Radio Service.

(d) For use by Class C Mobile stations on a shared basis with other stations in the Citizens Radio Service, subject to no protection from interference due to the operation of industrial, scientific or medical devices on the frequency 27.12 Mc:

Mc	Mc
26.995	27.145
27.045	27.195
27.095	27.255

¹ This frequency is also shared with stations in other radio services.

§ 19.32 *Station power.* The maximum plate power input to the anode (plate) circuit of the electron tube or tubes which supply energy to the radiating system of a station in this service shall not exceed the following values:

Class of station	Frequency (Mc)	Maximum plate power input to the final radio frequency stage (watts)
A	26.96-27.23	5.0
A	464.725-465.275	60.0
B	465.00	3.0
C	26.96-27.23	5.0
C	27.255	30.0

§ 19.33 *Frequency tolerance.* The carrier frequency of a station in this service shall be maintained as follows:

Class of station	Maximum authorized plate power input to the final R. F. stage	Frequency (Mc)	Frequency tolerance (%)	
			Fixed and base	Mobile
A	5 watts or less	26.96-27.23		0.005
A	3 watts or less	464.725-465.275	0.001	.005
A	over 3 watts	464.725-465.275	.001	.001
B	3 watts or less	465.00	.005	.005
C	5 watts or less	26.96-27.23		.01
C	over 5 watts	27.255		.005

§ 19.34 *Types of emission.* (a) Except as provided in paragraph (d) of this section, Class A stations in this service will be authorized for radiotelephony only. The authorization to use radiotelephony will be construed to include the use of tone signals or signalling devices whose sole function is to establish and maintain voice communication between stations.

(b) Class B citizens stations will be authorized to use amplitude or frequency modulation, or on-off unmodulated carrier, and may be used for radiotelephone, to control remote objects or devices by means of radio, or to remotely actuate devices which are used as a means of attracting attention.

(c) Class C citizens stations will be authorized to use amplitude tone modulation or on-off unmodulated carriers only, and may be used only to control remote objects or devices by radio or to remotely actuate devices which are used solely as a means of attracting attention.

(d) Other types of emission not described in the preceding paragraphs of this section may be authorized for citizens radio stations upon a showing of need therefor. An application requesting such authorization shall fully describe the emission desired, shall indicate the bandwidth required for satisfactory communications, and shall state the purpose for which such emission is required. For information regarding the classification of emissions and the calculation of the bandwidth, reference should be made to Part 2 of this chapter.

§ 19.35 *Emission limitations.* (a) Each authorization issued to a Class A citizens stations operating in this serv-

ice will show, as the prefix to the emission classification, a figure specifying the maximum bandwidth to be occupied by the emission.

(b) For Class B citizens stations the occupied bandwidth shall not exceed 450 kc. See § 19.33.

(c) For Class C citizens stations the occupied bandwidth shall not exceed 10 kc.

(d) The emission prefix figures referred to in paragraph (a) of this section shall not exceed the following:

Type of emission:	Authorized bandwidth (kc)
A3	6
F3	140

¹ F3 emission will not be authorized in the frequency band 26.96-27.28 Mc.

(e) For the purpose of demonstrating compliance with paragraphs (a) and (b) of this section, the following limits apply:

(1) Any emission appearing on any frequency removed from the carrier frequency by at least 50 percent, but not more than 100 percent of the maximum authorized bandwidth shall be attenuated not less than 25 db below the unmodulated carrier.

(2) Any harmonic or other spurious emission appearing on any frequency removed from the carrier frequency by at least 100 percent of the maximum authorized bandwidth shall be attenuated below the unmodulated carrier by not less than the amount indicated in the following table:

Maximum authorized plate power input to the final radio frequency stage:	Attenuation (db)
Over 3 watts	50
3 watts or less	40

¹ In the case of Class B stations having a maximum plate power input to the final radio frequency stage of 3 watts or less, any emission appearing on any frequency that falls within a band allocated to industrial, scientific and medical equipment under the provisions of Part 2 of this chapter shall be attenuated below the unmodulated carrier by not less than 30 db.

(f) When an unauthorized emission results in harmful interference, the Commission may, in its discretion, require appropriate technical changes in equipment to alleviate the interference.

§ 19.36 *Modulation limitations.* (a) When the radio frequency carrier of a station in this service is amplitude modulated, such modulation shall not exceed 100 percent on positive or negative peaks.

(b) The simultaneous amplitude modulation and frequency or phase modulation of a Class A or a Class C station in this service is prohibited.

§ 19.37 *Technical measurements.* Where it appears that a station in this service is not being operated in accordance with the technical standards therefor, the Commission may require the licensee to provide for such tests as may be necessary to determine whether the equipment is capable of meeting these standards.

§ 19.38 *Acceptability of transmitters for licensing.* (a) From time to time the Commission will publish a list of equipment entitled "Radio Equipment List, Part C." Copies of this list are available for inspection at the Commission's offices in Washington, D. C., and at each of its field offices. This list will include type approved and type accepted equipment and equipment which was included in this list on May 16, 1955. Such equipment will continue to be included on the list unless it is removed therefrom by Commission action.

(b) Except for crystal controlled transmitters used at Class C stations, each transmitter utilized by a station authorized for operation under this Part must be a type which is included on the Commission's current "Radio Equipment List, Part C" and designated for use in this service. Until further notice, however, listed equipment in use may continue to be used by the same licensee, his successors, or assigns in business provided the operation of such equipment does not result in harmful interference due to the failure of such equipment to comply with the current technical standards of the rules.

§ 19.39 *Type acceptance of equipment.* (a) Any manufacturer of a transmitter to be built for use at Class A stations in this service may request "type acceptance" for such transmitter following the type acceptance procedures set forth in Part 2 of this chapter.

(b) Type acceptance for an individual transmitter may also be requested by an applicant for a station authorization by

following the type acceptance procedures set forth in Part 2 of this chapter. Such transmitters, if accepted, will not normally be included on the Commission's "Radio Equipment List, Part C", but will be individually enumerated on the station authorization.

(c) Additional rules with respect to type acceptance are set forth in Part 2 of this chapter. These rules include information with respect to withdrawal of type acceptance, modification of type accepted equipment and limitations on the findings upon which type acceptance is based.

§ 19.40 *Submission of Class B and noncrystal controlled Class C station equipment for type approval.* (a) Manufacturers of equipment capable of being used or operated in this service may submit units of such equipment to the Commission for type approval, upon grant of request therefor made in writing by the manufacturer to the Secretary of the Commission. Such a request normally will not be granted unless at least 100 units of the model to be submitted are scheduled for manufacture. When advised by the Commission, the applicant must send a typical production model or prototype of the particular equipment complete with tubes and power supply to the Commission's laboratory at Laurel, Maryland, for tests. All instructions which are intended to be supplied to the purchaser of the equipment shall be included. Transportation of the equipment and associated documents to and from the laboratory shall be at no cost to the Government.

(b) Prior to approval or rejection of the equipment, the results of these tests will be made known only to the responsible Government officials and to the Commission. An official report of the tests will be made available only to the manufacturer involved; however, the Commission will publish from time to time lists of approved equipment.

(c) The prescribed tests may be conducted by the Federal Communications Commission or by any other cooperating Government department. In addition, field tests, as deemed necessary or desirable by the Commission, may be carried out by authorized Government personnel to determine the reliability of the equipment under operating conditions comparable to those expected to be encountered in actual service.

(d) Type approval is not required for Class C station equipment employing crystal control.

§ 19.41 *Minimum equipment specifications.* Equipment submitted for type approval in this service shall be capable of meeting the technical specifications contained in this part for Class B or Class C stations, and, in addition, shall comply with the following:

(a) Any basic instructions concerning the proper adjustment, use or operation of the equipment that may be necessary shall be attached to the equipment in a suitable manner and in such positions as to be easily read by the operator.

(b) A durable nameplate shall be mounted on each transmitter showing the name of the manufacturer, the type

or model designation, and providing suitable space for permanently displaying the transmitter serial number, FCC type approval number, and the class of station for which approved.

(c) The transmitter shall be designed, constructed and adjusted by the manufacturer to operate on a frequency or frequencies available to the class of station for which type approval is sought. In designing the equipment, every reasonable precaution shall be taken to protect the user from high voltage shock and radio frequency burns. Connections to batteries (if used) shall be made in such a manner as to permit replacement by the user without causing improper operation of the transmitter. Generally accepted modern engineering principles shall be utilized in the generation of radio frequency currents so as to guard against unnecessary interference to other radio services. In cases of harmful interference arising from the design, construction or operation of the equipment, the Commission may require appropriate technical changes in equipment to alleviate interference.

(d) Controls which may effect changes in the carrier frequency of the transmitter shall not be accessible from the exterior of any unit unless such accessibility is specifically approved by the Commission.

§ 19.42 *Test procedure.* Type approval tests to determine whether radio equipment meets the technical specifications contained in this part will be conducted under the following conditions:

(a) Gradual ambient temperature variations from 0° to 125° F.

(b) Relative ambient humidity from 20 to 95 percent. This test will normally consist of subjecting the equipment for at least three consecutive periods of 24 hours each, to a relative ambient humidity of 20, 60 and 95 percent, respectively, at a temperature of approximately 80° F.

(c) Movement of transmitter or objects in the immediate vicinity thereof.

(d) Power supply voltage variations normally to be encountered under actual operating conditions.

(e) Additional tests as may be prescribed, if considered necessary or desirable.

§ 19.43 *Certificate of type approval.* A certificate or notice of type approval, when issued to the manufacturer of equipment intended to be used or operated in the Citizens Radio Service, constitutes a recognition that on the basis of the test made the particular type of equipment appears to have the capability of functioning in accordance with the technical specifications and regulations contained in this part: *Provided*, That all such additional equipment of the same type is properly constructed, maintained and operated: *And provided further*, That no change whatsoever is made in the design or construction of such equipment except upon specific approval by the Commission.

§ 19.44 *Acceptance of composite equipment.* (a) Class B and noncrystal controlled Class C station equipment constructed by a manufacturer in lots of

less than 100 units will not, in the usual case, be tested by the Commission for the purpose of granting type approval. Except as provided in paragraph (b) of this section, an applicant in this service who proposes to use or operate composite or other equipment which has not been type approved shall supply complete information showing that the equipment fully complies with appropriate station requirements, using supplementary sheets which shall accompany the standard application form. The Commission may, at its discretion, require that such equipment or a prototype thereof be made available to its laboratory at Laurel, Maryland, for testing in accordance with the procedures described elsewhere in this part, as applicable to equipment to be manufactured in lots of more than 100 units. In addition, field tests as deemed necessary or desirable may be carried out by authorized Government personnel to determine the reliability of the equipment under operating conditions comparable to those encountered in actual service.

(b) Class C equipment employing crystal control. Supplemental technical information is not required to accompany the standard application form: *Provided, however*, That it is clearly indicated that the equipment employs crystal control.

SUBPART D—STATION OPERATING REQUIREMENTS

§ 19.51 *Permissible communications.*

(a) Each station in the Citizens Radio Service is authorized to communicate with other stations in the service. Communication with stations licensed under other parts of this chapter or with United States Government or foreign stations is prohibited.

(b) Any station licensed in this service may be used to provide a radio communication service to any person, including the licensee of another station in the same service, on a strictly voluntary and no-charge basis; however, no other form of cooperative or shared use of facilities licensed in this service shall be permitted.

(c) All communications shall be limited to the minimum practicable transmission time.

(d) A citizens radio station may not be used for any purpose contrary to Federal, state or local law; or to carry communications for hire; or to carry program material of any kind either directly or indirectly for use in connection with radio broadcasting; or for direct transmission to the public through public address systems or by any other means.

(e) The licensee of any station in this service may, during a period of emergency in which normal communication facilities are disrupted as a result of hurricane, flood, earthquake, enemy action, or similar disaster, utilize such station for emergency communication without regard to the provisions of this section other than the following:

(1) As soon as possible after the beginning of such emergency use, notice be sent to the Commission in Washington, D. C. and to the Engineer in Charge of the Radio District in which the station

is located, stating the nature of the emergency and the use to which the station is being put;

(2) The emergency use of the station be discontinued as soon as substantially normal communication facilities are again available, and the Commission in Washington, D. C., and the Engineer in Charge be notified immediately when such special use of the station is terminated; and

(3) The Commission may at any time order discontinuance of such special use of the authorized facilities.

(f) A station in this service used to control remote objects or devices by means of radio, or to remotely actuate devices which are used as a means of attracting attention, shall not be used where its operation involves the continuous radiation of energy except for brief tests or when adjustments are being made to the transmitter; *Provided, however,* That stations used to control model aircraft with interrupted tone modulation may use continuous radiation of an unmodulated carrier while the aircraft is actually in flight.

(g) A citizens radio station used for the purpose of communication by radiotelephone shall not emit a carrier wave unless modulated for the purpose of communication; and when using radiotelegraph, radiation of energy shall not occur except when telegraphic signals are being transmitted, except for brief tests or when adjustments are being made to the transmitter.

§ 19.52 Station identification. The registered serial number appearing on each citizens radio station license shall be the call signal assigned to such station. A citizens radio station shall transmit its call signal at the beginning and at the termination of all communications as well as at least once every ten minutes during every transmission of more than ten minutes duration: *Provided,* That, in the case of stations conducting an exchange of several transmissions in sequence with each transmission less than three minutes' duration, the call signal of the communicating stations need be transmitted only once every ten minutes of operation. Stations licensed solely for radio control of devices or remote objects are not required to identify transmissions.

§ 19.53 Remote control. A citizens radio station may be authorized to be used or operated by remote control: *Provided,* That adequate means are available to enable the person using or operating the station to render the transmitting equipment inoperative from the remote control position or positions should improper operation occur.

§ 19.54 Suspension of transmissions required. The radiations of the transmitter shall be suspended immediately upon detection or notification of a deviation from the technical requirements of the rules in this part until such deviation is corrected.

§ 19.55 Operator requirements. (a) Except for stations using manually operated telegraphy transmitting by any type of the Morse Code, no operator license is required for the operation of

a citizens radio station during the course of normal rendition of service.

(b) Stations using manually operated telegraphy transmitting by any type of the Morse Code may, during the course of normal rendition of service, be operated only by the holders of either a Radiotelegraph Third Class Operator Permit or a higher class of radiotelegraph operator license (except the holders of Temporary Limited Radiotelegraph Second Class Operator Licenses).

(c) In any case, however, all transmitter adjustments or tests during or coincident with the installation, servicing, or maintenance of a radio station, which may affect the proper operation of such station, shall be made by or under the immediate supervision and responsibility of a person holding a first or second-class commercial radio operator license, either radiotelephone or radiotelegraph, as may be appropriate for the type of emission employed, and such person shall be responsible for the proper functioning of the station equipment.

§ 19.56 Posting of station license.

(a) The current authorization of each Citizens Radio Station operated at a fixed location shall be permanently posted at the principal fixed location from which the station is controlled when being operated, and a photocopy thereof shall be permanently posted at all other fixed locations (if any) from which the station is controlled. In addition, if the transmitter of any such station is not readily accessible for inspection by Commission representatives or is not in view from at least one location at which the station license or a photocopy thereof is required to be posted, an executed Transmitter Identification Card (FCC Form 452-C, Revised) shall be affixed to that transmitter.

(b) The current authorization of each citizens radio station operated as a mobile station or operated at temporary locations may be retained in the permanent records of the station and need not be posted; however, an executed Transmitter Identification Card (FCC Form 452-C, Revised) shall be affixed to each transmitter which is operated as a mobile station or is operated at temporary locations, and to the control equipment of each such transmitter in every case where such transmitter is not in view from the location from which the station is controlled.

(c) The following information shall be entered on each Transmitter Identification Card (FCC Form 452-C, Revised) which is used for transmitter or station identification in accordance with the foregoing:

- (1) Name of the station licensee;
- (2) Station call sign assigned by the Commission (see § 19.52);
- (3) Exact location or locations of the permanent station records;
- (4) Frequency or frequencies upon which the associated transmitter is adjusted to operate; and
- (5) Signature of the licensee.

§ 19.57 Inspection of stations. All stations and records of stations in the Citizens Radio Service shall be made

available for inspection upon request of an authorized representative of the Commission made to the licensee or to his representative.

§ 19.58 Inspection and maintenance of tower marking and associated control equipment. The licensee of any radio station which has an antenna structure required to be painted or illuminated pursuant to the provisions of section 303 (q) of the Communications Act of 1934, as amended, and/or Part 17 of this chapter, shall operate and maintain the tower marking and associated control equipment in accordance with the following:

(a) The tower lights shall be observed at least once each 24 hours, either visually or by observing an automatic and properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or, alternatively, there shall be provided and properly maintained an automatic alarm system designed to detect any failure of the tower lights and to provide indication of such failure to the licensee.

(b) Any observed or otherwise known failure of a code or rotating beacon light or top light not corrected within thirty minutes, regardless of the cause of such failure, shall be reported immediately by telephone or telegraph to the nearest Airways Communication Station or Office of the Civil Aeronautics Administration. Further notification by telephone or telegraph shall be given immediately upon resumption of the required illumination.

(c) All automatic or mechanical control devices, indicators, and alarm systems associated with the tower lights shall be inspected at intervals not to exceed three months, to insure that such apparatus is functioning properly.

(d) All lighting shall be exhibited from sunset to sunrise unless otherwise specified in the instrument of station authorization.

(e) A sufficient supply of spare lamps shall be maintained for immediate replacement purposes at all times.

(f) All towers shall be cleaned or repainted as often as is necessary to maintain good visibility.

§ 19.59 Answers to notices of violations. (a) Any licensee receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any legislative act, Executive Order, treaty to which the United States is a party, or the rules and regulations of the Federal Communications Commission, shall within three days from such receipt, send a written answer direct to the office of the Commission originating the official notice. If an answer cannot be sent or acknowledgment made within such three-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices.

(b) If the notice relates to some violation that may be due to the physical or electrical characteristics of the transmitting apparatus, the answer shall state fully what steps, if any, are taken to prevent future violations.

(c) If the notice of violation relates to some lack of attention to or improper operation of the station, the name of the person who caused the violation shall be given.

§ 19.60 *Recording of tower light inspections.* When a station in this service has an antenna structure which is required to be illuminated, appropriate entries shall be made in the station records, and retained for a period of at least one year, as follows:

(a) The time the tower lights are turned on and off each day, if manually controlled.

(b) The time the daily check of proper operation of the tower lights was made.

(c) In the event of any observed or otherwise known failure of a tower light:

(1) Nature of such failure.

(2) Date and time the failure was observed or otherwise noted.

(3) Date, time and nature of the adjustments, repairs, or replacements made.

(4) Identification of the Airways Communication Station (Civil Aeronautics Administration) notified of the failure of any code or rotating beacon light not corrected within thirty minutes, and the date and time such notice was given.

(5) Date and time notice was given to the Airways Communication Station (Civil Aeronautics Administration) that the required illumination was resumed.

(d) Upon completion of the three-month periodic inspection required by § 19.57:

(1) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators and alarm systems.

(2) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

§ 19.61 *False signals.* No person shall transmit false or deceptive signals or communications by radio, or identify the station he is using or operating by means of a call signal or signal which has not been assigned by proper authority to that station, or refuse to properly identify himself and the radio station he is using or operating when such identification is possible under the conditions of use or operation in effect at the time such identification is requested.

§ 19.62 *Station location.* (a) The specific location of each Base Station and each Fixed Station and the specific area of operation of each Class A Mobile Station shall be indicated in the application for license.

(b) A Class A Mobile Station authorized in this service may be used or operated anywhere in the United States subject to the provisions of paragraph (d) of this section: *Provided, That* when the area of operation is changed for a period

exceeding seven days, the following procedure shall be followed:

(1) When the change of area of operation occurs inside the same Radio District, the Engineer in Charge of the Radio District involved and the Commission's office, Washington 25, D. C., shall be notified.

(2) When the station is moved from one Radio District to another, the Engineers in Charge of the two Radio Districts involved and the Commission's Offices, Washington 25, D. C., shall be notified.

(c) A Class B or Class C mobile station may be used or operated anywhere in the United States subject to the provisions of paragraph (d) of this section.

(d) A Mobile Station authorized in this service may be used or operated on any craft or vehicle: *Provided, That* when such craft or vehicle is outside the territorial limits of the United States, the station, its operation, and its operator shall be subject to the governing provisions of any treaty concerning telecommunications to which the United States is a party, and when within the territorial limits of any foreign country, the station shall be subject also to such laws and regulations of that country as may be applicable.

§ 19.63 *Control of transmitters.* All transmitters licensed in the Citizens Radio Service must at all times be under the control of the licensee. The licensee shall not transfer, assign, or dispose of, in any manner, directly or indirectly, the operating authority under his station license.

§ 19.64 *Civil Defense Communications.* A Citizens radio station may be used for the transmission of civil defense communications during an actual or simulated emergency, including drills or tests, *Provided, That:*

(a) Such communications are conducted under the direction of civil defense authorities.

(b) As soon as possible after the beginning of such emergency use, notice is sent to the Commission in Washington, D. C. and to the Engineer in Charge of the Radio District in which the station is located stating the nature of the emergency and the use to which the station is being put; and

(c) The Commission may at any time order the discontinuance of such special use of the authorized facilities.

[F. R. Doc. 57-2886; Filed, Apr. 15, 1957; 8:46 a. m.]

[47 CFR Part 21]

[Docket No. 11995; FCC 57-360]

DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of subparts G and H of Part 21 of the Commission's Rules—Domestic Public Radio Services (Other than Maritime Mobile).

1. The Commission has under consideration: (a) The disposition to be made,

in the Domestic Public Land Mobile Radio Service, of frequencies released as a consequence of The Western Union Telegraph Company's discontinuance of its "Telecar" operations in Baltimore, Maryland because of economic impracticability and the apparent abandonment of plans to extend such operations elsewhere, in accordance with the provisions of § 21.501 (e) of the rules; (b) the disposition to be made, in the Domestic Public Land Mobile Radio Service, of new channels to be derived through channel splitting in the 152-162 Mc band, as a consequence of the Commission's Report and Order in Docket No. 11253, adopted September 19, 1956; (c) the reallocation of the frequency bands 455-456 Mc and 460-461 Mc from the Remote Broadcast Pickup and Citizens Radio Services, respectively, to the Domestic Public Land Mobile Radio Service, under § 21.501 (b) of the rules, to meet, in part, the public need for common carrier land mobile radio service; (d) the reduction of channel width from 100 kc to 50 kc on frequencies in the 450 Mc region allocated to the Domestic Public Land Mobile Radio Service; (e) the use of frequencies, which are allocated to the Domestic Public Land Mobile Radio Service, by the Rural Radio Service under Subpart H of Part 21; and (f) the listing of the frequency bands 154.04-154.46 Mc and 161.40-161.85 Mc, which are allocated, in § 2.104 (a) of the rules, exclusively in Puerto Rico and the Virgin Islands, to the Aeronautical Fixed, Domestic Fixed Public and International Fixed Public radio services on a shared basis.

2. It is proposed to amend Subpart G (Domestic Public Land Mobile Radio Service) and Subpart H (Rural Radio Service) of Part 21 of the rules in the manner set forth below. The action taken herein is pursuant to the authority contained in sections 4 (i) and 303 of the Communications Act of 1934, as amended.

3. Any interested party who is of the opinion that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before June 10, 1957, a written statement or brief setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Comments or briefs in reply to original comments may be filed within ten (10) days from the last day for filing original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments that are submitted before taking action in these matters and, if any comments appear to warrant the holding of a hearing or oral argument, a notice of the time and place of such hearing or oral argument will be given.

4. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and fourteen (14) copies of all statements, briefs, or

comments shall be furnished the Commission.

Adopted: April 3, 1957.

Released: April 9, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Acting Secretary.

Part 21, Rules Governing Domestic Public Radio Services (other than Maritime Mobile) is amended as follows:

1. Add the following at the end of § 21.501 (a):

Zone X—Base station frequency: 35.46 Mc; Mobile and Auxiliary Test station frequency 43.46 Mc.

California.
Oregon.
Washington.

2. Delete the present text of § 21.501 (b) and in lieu thereof insert the following:

(b) For assignment, to stations of communication common carriers engaged also in the business of affording public landline message telephone service, for General and Dispatch Communications (provided that Signaling Communications may also be furnished by any facility rendering such General or Dispatch service):¹¹

Base station frequencies (Mc)	Mobile and auxiliary test station frequencies (Mc)
152.51	157.77
*152.54	*157.80
152.57	157.83
*152.60	*157.86
152.63	157.89
*152.66	*157.92
152.69	157.95
*152.72	*157.98
152.75	158.01
*152.78	*158.04
152.81	158.07
454.40	459.40
454.45	459.45
454.50	459.50
454.55	459.55
454.60	459.60
454.65	459.65
454.70	459.70
454.75	459.75
454.80	459.80
454.85	459.85
454.90	459.90
454.95	459.95
*455.00	*460.00
*455.05	*460.05
*455.10	*460.10
*455.15	*460.15
*455.20	*460.20
*455.25	*460.25
*455.30	*460.30
*455.35	*460.35
*455.40	*460.40
*455.45	*460.45
*455.50	*460.50
*455.55	*460.55
*455.60	*460.60
*455.65	*460.65
*455.70	*460.70
*455.75	*460.75
*455.80	*460.80
*455.85	*460.85
*455.90	*460.90
*455.95	*460.95

Frequencies designated by an asterisk (*) become available for assignment on Novem-

¹ Commissioners Hyde, Doerfer and Mack not participating. Concurring statement of Commissioner Bartley filed with the original document.

ber 1, 1963; however, earlier assignment may be made when the transmitting equipment proposed to be installed is capable of meeting the technical standards set forth elsewhere in this part and applicable to equipment installed after November 1, 1963, and when the application is accompanied by an engineering showing which clearly indicates that the proposed station will not cause harmful interference to any station located within 75 miles of the proposed station and authorized to operate on frequencies removed by 30 kc or less from the proposed frequency. This showing shall include a notarized statement from each of such licensees setting forth their views as to the probability of harmful interference being caused thereby; if harmful interference is anticipated, the basis for the belief should be set forth by the licensee.

Frequencies designated by a double asterisk (**) become available for assignment on January 1, 1958.

3. Delete the present text of § 21.501 (c) and in lieu thereof insert the following:

(c) For assignment to stations of communication common carriers not also engaged in the business of providing a public landline message telephone service for General and Dispatch Communications (provided that Signaling Communications may also be furnished by any facility rendering such General or Dispatch service):¹¹

Base station frequencies (Mc)	Mobile and auxiliary test station frequencies (Mc)
152.03	158.49
*152.06	*158.52
152.09	158.55
*152.12	*158.58
152.15	158.61
*152.18	*158.64
152.21	158.67
454.05	459.05
454.10	459.10
454.15	459.15
454.20	459.20
454.25	459.25
454.30	459.30
454.35	459.35

Frequencies designated by an asterisk (*) become available for assignment on November 1, 1963; however, earlier assignment may be made when the transmission equipment proposed to be installed is capable of meeting the technical standards set forth elsewhere in this part and applicable to equipment installed after November 1, 1963 and when the application is accompanied by an engineering showing which clearly indicates that the proposed station will not cause harmful interference to any station located within 75 miles of the proposed station and authorized to operate on frequencies removed by 30 kc or less from the proposed frequency. This showing shall include a notarized statement from each of such licensees setting forth their views as to the probability of harmful interference being caused thereby; if harmful interference is anticipated, the basis for the belief should be set forth by the licensee.

4. Delete the present text of § 21.501 (d) and in lieu thereof insert the following:

(d) For assignment to base stations of communication common carriers for use exclusively in providing a one-way signaling service to mobile receivers:

Mc
35.22
35.58
43.22
43.58

(1) Wherever feasible, the frequencies 35.22 Mc and 35.58 Mc shall be assigned for use in any area prior to the assignment of the frequencies 43.22 Mc and 43.58 Mc.

(2) If an applicant for authorization to provide an exclusive one-way signaling service provides, or proposes also to provide, General or Dispatch service in accordance with paragraphs (a), (b) and (c) of this section, the application for a one-way facility should be supported with full information to show why the proposed signaling service could not be provided in connection with the base station facilities used for such General or Dispatch service.

5. Delete §§ 21.501 (e) and 21.508 (b) and (f) in their entirety.

6. Delete the present text of § 21.601 (a) and in lieu thereof insert the following:

(a) The following frequencies are available primarily to the Domestic Public Land Mobile Radio Service and, on a secondary basis, to stations in the Rural Radio Service, provided no harmful interference is caused to stations in the Domestic Public Land Mobile Radio Service:

Central office and inter-office station frequencies (Mc)	Rural subscriber and inter-office station frequencies (Mc)
*152.03	*158.49
*152.06	*158.52
*152.09	*158.55
*152.12	*158.58
*152.15	*158.61
*152.18	*158.64
*152.21	*158.67
152.51	157.77
152.54	157.80
152.57	157.83
152.60	157.86
152.63	157.89
152.66	157.92
152.69	157.95
152.72	157.98
152.75	158.01
152.78	158.04
152.81	158.07
*454.05	*459.05
*454.10	*459.10
*454.15	*459.15
*454.20	*459.20
*454.25	*459.25
*454.30	*459.30
*454.35	*459.35
454.40	459.40
454.45	459.45
454.50	459.50
454.55	459.55
454.60	459.60
454.65	459.65
454.70	459.70
454.75	459.75
454.80	459.80
454.85	459.85
454.90	459.90
454.95	459.95
*455.00	*460.00
*455.05	*460.05
*455.10	*460.10
*455.15	*460.15
*455.20	*460.20
*455.25	*460.25
*455.30	*460.30
*455.35	*460.35
*455.40	*460.40
*455.45	*460.45
*455.50	*460.50
*455.55	*460.55
*455.60	*460.60
*455.65	*460.65
*455.70	*460.70
*455.75	*460.75

Central office and inter-office station frequencies (Mc)	Rural subscriber and inter-office station frequencies (Mc)
*455.80-----	*460.80
*455.85-----	*460.85
*455.90-----	*460.90
*455.95-----	*460.95

Frequencies designated by an asterisk (*) are available for assignment only to stations of communication common carriers not also engaged in the business of providing a public landline message telephone service. The remainder of the frequencies are available for assignment only to stations of communication common carriers engaged also in the business of affording public landline message telephone service.

Frequencies designated by a double asterisk (**) become available for assignment on January 1, 1958.

7. Add a new § 21.601 (e) as follows:

(e) In Puerto Rico and the Virgin Islands only, the bands 154.04 Mc to 154.46 Mc and 161.40 Mc to 161.85 Mc are available for assignment to stations in the Rural Radio Service on a shared basis with stations in the International Fixed Public and Aeronautical Fixed Radio Services. Spacings between assignments in these services are unspecified.

[F. R. Doc. 57-2887; Filed, Apr. 15, 1957; 8:46 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

UNITED STATES STANDARDS FOR GRADES OF CANNED SQUASH (SUMMER TYPE) ¹

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the U. S. Department of Agriculture is considering the issuance of United States Standards for Grades of Canned Squash (Summer Type) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.). This standard, if made effective, will be the first issue by the Department of grade standards for this product.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington 25, D. C., not later than 60 days after publication hereof in the FEDERAL REGISTER.

The proposed standards are as follows:

PRODUCT DESCRIPTION, STYLES, AND GRADES

Sec. 52.3581 Product description.

¹ Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

Sec.	
52.3582	Styles of canned squash.
52.3583	Grades of canned squash.
FILL OF CONTAINER AND DRAINED WEIGHT	
52.3584	Recommended fill of container.
52.3585	Drained weights.

FACTORS OF QUALITY

52.3586	Ascertaining the grade.
52.3587	Ascertaining the rating for the factors which are scored.
52.3588	Color.
52.3589	Defects.
52.3590	Character.

LOT CERTIFICATION TOLERANCES

52.3591	Tolerances for certification of officially drawn samples.
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SCORE SHEET

52.3592	Score sheet for canned squash.
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AUTHORITY: §§ 52.3581 to 52.3592 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

PRODUCT DESCRIPTION, STYLES, AND GRADES

§ 52.3581 *Product description.* "Canned squash (summer-type)" is the canned product prepared from clean, sound, succulent, immature summer type squash, hereinafter called canned squash, which has been washed, properly trimmed and sorted. The product is packed in accordance with good commercial practice and is sufficiently processed by heat to assure preservation of the product in hermetically sealed containers.

§ 52.3582 *Styles of canned squash.* (a) "Whole" means canned squash consisting of whole squash with stems removed.

(b) "Sliced crosswise" means canned squash consisting of units cut at right angle to the longitudinal axis into slices of approximately uniform thickness with parallel surfaces.

(c) "Cut" means canned squash cut into units which are not uniform in size or shape or which do not conform to any of the foregoing styles.

§ 52.3583 *Grades of canned squash.* (a) "U. S. Grade A" or "U. S. Fancy" is the quality of canned squash that possesses similar varietal characteristics; that possesses a normal flavor; that possesses a good color; that is practically free from defects; that possesses a good character; and that for those factors which are rated in accordance with the scoring system outlined in this subpart the total score is not less than 85 points.

(b) "U. S. Grade C" or "U. S. Standard" is the quality of canned squash that possesses similar varietal characteristics; that possesses a normal flavor; that possesses a fairly good color; that is fairly free from defects; that possesses a fairly good character; and that for those factors which are rated in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(c) "Substandard" is the quality of canned squash that fails to meet the requirements of U. S. Grade C or U. S. Standard.

FILL OF CONTAINER AND DRAINED WEIGHTS

§ 52.3584 *Recommended fill of container.* The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purpose of these grades. It is recommended that each container of canned squash be filled with squash as full as practicable without impairment of quality and that the product and packing medium occupy not less than 90 percent of the volume of the container.

§ 52.3585 *Drained weights—(a) General.* The minimum drained weight recommendations for canned squash in table 1 hereof are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purpose of these grades.

(b) *Method for ascertaining drained weight.* The drained weight is determined by emptying the contents of the container upon a United States Standard No. 8 sieve of proper diameter so as to distribute the product evenly, inclining the sieve to facilitate drainage, and allow the product to drain for two minutes. The drained weight is the weight of the sieve and the product less the weight of the dry sieve. A sieve 8 inches in diameter is used for the No. 3 size can (404 x 414) and smaller sizes; and a sieve 12 inches in diameter is used for containers larger than the equivalent of the No. 3 size can.

(c) *Compliance with recommended drained weights.* Compliance with the recommended drained weights is determined by averaging the drained weight from all the containers which are representative of a specific lot and such lot is considered as meeting the recommendations if the following criteria are met:

(1) The average of the drained weights from all of the containers meets the recommended drained weights.

(2) One-half or more of the containers meets the recommended drained weight; and

(3) The drained weights from the containers which do not meet the recommended drained weight are within the range of variability for good commercial practice.

TABLE 1—RECOMMENDED MINIMUM DRAINED WEIGHTS, IN OUNCES, OF CANNED SQUASH

Container size or designation	Maximum headspace allowable (measured from top of double seam)	Styles of canned (summer type) squash	
		Whole	Sliced or cut
8-ounce tall	16th of an inch		
No. 303	7.6	4.5	5
No. 2	9.4	12	12.5
No. 10	9.7	14.6	15.2
	13.6	72	74

FACTORS OF QUALITY

§ 52.3586 *Ascertaining the grade—(a) General.* In addition to considering other requirements outlined in the standards, the following quality factors are evaluated in ascertaining the grade of the product:

(1) *Factors which are not scored.* (i) Varietal characteristics;

(ii) Flavor.

(2) *Factors which are scored.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors:	Points
Color	20
Defects	40
Character	40
Total score	100

(b) *Normal flavor.* "Normal flavor" means that the product is free from objectionable flavors and objectionable odors of any kind.

§ 52.3587 *Ascertaining the rating for the factors which are scored.* The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive. (For example, "17 to 20 points" means 17, 18, 19, or 20 points.)

§ 52.3588 *Color—(a) (A) classification.* Canned squash that possesses a good color may be given a score of 17 to 20 points. "Good color" means that the color of the squash is bright and typical of young and tender squash of similar varietal characteristics which has been properly processed.

(b) (C) *classification.* Canned squash that possesses a fairly good color may be given a score of 14 to 16 points. Canned squash that falls into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the color of the squash is typical of fairly young and tender squash of similar varietal characteristics which has been properly processed.

(c) (SStd.) *classification.* Canned squash that fails to meet the requirements of paragraph (b) of this section may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.3589 *Defects—(a) General.* The factor of defects refers to the degree of freedom from extraneous vegetable material, sand, grit, or silt, poorly cut units, units damaged by mechanical injury, and units damaged by discoloration, scars, insect injury, or damaged by other means.

(1) "Unit" means a whole squash or a portion of a squash.

(2) "Damaged unit" means any unit damaged by discoloration, scars, insect injury, or by other means except damaged by mechanical injury to the extent that the appearance or eating quality is materially affected.

(3) "Seriously damaged" means damaged to the extent that the appearance or eating quality of the unit is seriously affected.

(4) "Harmless extraneous vegetable material" means leaves, detached stems

or portions thereof, or similar vegetable material.

(5) "Poorly cut" means units with attached stems or stem material, very ragged units, pieces of less than $\frac{1}{2}$ slice in sliced style squash and pieces measuring $\frac{1}{2}$ inch or less in the longest dimension for cut style.

(6) "Damaged by mechanical injury" means broken or mashed to such an extent that the appearance or eating quality of the unit is seriously affected.

(7) "Sand, grit, or silt" means any particle of earthy material.

(b) (A) *classification.* Canned squash that is practically free from defects may be given a score of 34 to 40 points. "Practically free from defects" means that the product contains no grit, sand, or silt that affects the eating quality or appearance of the canned squash; that for each 12 ounces of drained weight there may be present not more than one piece of harmless extraneous vegetable material. The combined weight of all other defects and defective units shall not exceed 12 percent of the drained weight of the units: *Provided, That*

(1) Not more than 4 percent, by weight, is of damaged units and of such 4 percent not more than one-fourth thereof or 1 percent, by weight, of all the units consist of units that are seriously damaged; or

(2) Not more than 10 percent, by weight, is of poorly cut units, or of units damaged by mechanical injury, or any combination thereof of not more than 10 percent, by weight.

(c) (C) *classification.* If the canned squash is fairly free from defects a score of 28 to 33 points may be given. Canned squash that falls into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that the product may contain a trace of sand, grit, or silt that does not materially affect the eating quality or appearance of the canned squash; that for each 12 ounces of drained weight there may be present not more than two pieces of harmless extraneous vegetable material. The combined weight of all other defects and defective units shall not exceed 20 percent of the drained weight of the units: *Provided, That*

(1) Not more than 8 percent, by weight, is of damaged units and of such 8 percent, not more than one-fourth thereof or 2 percent, by weight, of all the units consist of units that are seriously damaged.

(2) Not more than 15 percent, by weight, is of poorly cut units, or of units damaged by mechanical injury, or any combination thereof of not more than 15 percent, by weight.

(d) (SStd.) *classification.* Canned squash that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 27 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.3590 *Character—(a) General.* The factor of character refers to the fleshy texture, the tenderness, and the degree of development of the seeds.

(b) (A) *classification.* Canned squash that possesses a good character may be given a score of 34 to 40 points. "Good character" means that the units are practically intact, are fleshy and tender, that the seeds are in the immature stage, and that not more than 5 percent, by weight, of the units may be of fairly good character.

(c) (C) *classification.* If the canned squash possesses a fairly good character a score of 28 to 33 points may be given. Canned squash that falls into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good character" means that the units may show slight disintegration, may have lost to a considerable extent their fleshy texture, may be fairly tender, and that the seeds may have passed the immature stage of maturity, but are not hard and that not more than 10 percent, by weight, of the units fail to meet the requirements for fairly good character.

(d) (SStd.) *classification.* Canned squash that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 27 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

LOT CERTIFICATION TOLERANCES

§ 52.3591 *Tolerances for certification of officially drawn samples.* (a) When certifying samples that have been officially drawn and which represent a specific lot of canned squash the grade for such lot will be determined by averaging the total scores of the containers comprising the sample, if, (1) such containers meet all of the applicable grade requirements of the factors of quality that are not rated by score points; (2) all containers comprising the sample meet all applicable standards of quality promulgated under the Federal Food, Drug and Cosmetic Act and in effect at the time of the aforesaid certification; and (3) with respect to those factors which are rated by score points:

(i) Not more than one-sixth of the containers fails to meet the grade indicated by the average of such total scores;

(ii) None of the containers falls more than four points below the minimum score for the grade indicated by the average of such total scores;

(iii) None of the containers falls more than one grade below the grade indicated by the average of such total scores; and

(iv) The average score of all containers for any factor subject to a limiting rule is within the score range of that factor for the grade indicated by the average of the total scores of the containers comprising the sample.

² It is possible that the tolerances to be applied in this connection will be the tolerances set forth in proposed amendments of the regulations governing the inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products, notice of proposed rule making in regard to which was published in the FEDERAL REGISTER issue of February 8, 1957 (22 F. R. 790).

§ 52.3592 Score sheet for canned squash.

Size and kind of container.....	
Container marks or identification.....	
Label.....	
Net weight (ounces).....	
Drained weight (ounces).....	
Style (whole, sliced, cut).....	
Factors	
Score points	
Color.....	20
Defects.....	40
Character.....	40
Total score.....	100
Grade.....	
Flavor and odor.....	

1 Indicates limiting rule.

Dated: April 11, 1957.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 57-3033; Filed, Apr. 15, 1957;
8:50 a. m.]

[7 CFR Part 995]

[Docket No. AO-197-A4, AO-285]

MILK IN LIMA, OHIO, MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement and order, as amended, regulating the handling of milk in the Lima, Ohio, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than on the 10th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the findings and conclusions and the proposed amendments to the tentative marketing agreement and to the order, hereinafter set forth, were formulated, was conducted at Mansfield, Ohio, on August 6-9, 1956, pursuant to notice thereof issued on July 18, 1956, and published in the FEDERAL REGISTER on July 21, 1956 (21 F. R. 5506).

The material issues relate to:

1. Expansion of the marketing area and issuance of a new order for a portion of the additional territory proposed;
2. A change in the method of applying Class I prices; changes in class butterfat differential rates and in the list of plants used in determining the Class II price;
3. A change in the method of pooling returns for producer milk;
4. Establishment of a base and excess plan for paying producers; and
5. Minor revisions and conforming changes in a number of order provisions and clarification of the order language with respect to reporting and accounting for milk.

The present Lima, Ohio, marketing area consists of the territory in Allen County and the City of Findlay, Ohio. Proposals were contained in the notice of hearing to consider extension of the regulation to milk handling in 17 additional counties located in North Central Ohio. These proposals may be grouped in the two broad categories. One would involve an extension of the present marketing area and the other would involve the issuance of a separate order for a portion of the proposed additional territory. Proponents of one of the latter type proposals, certain milk distributors in Marion and Richland Counties, indicated that theirs was a counter-proposal and made with the qualification that they were opposed to the extension of regulation. These distributors in their brief challenged the showing in the record of interstate commerce and the need for an order in the area proposed.

Upon the evidence adduced at the hearing and the record thereof it is hereby found and concluded that:

1. The Lima, Ohio, marketing area should be expanded to include the territory in Richland County and the Cities of Tiffin and Marion, Ohio, and redesignated as the North Central Ohio marketing area.

(a) *Character of commerce in the recommended additional area.* A milk processing plant located in Mansfield, Ohio, is subject to regulation under the present Lima Federal Order No. 95 by virtue of disposition of milk in Findlay and Allen County, Ohio. This plant is a substantial supplier of milk for the City of Mansfield, Richland County and 13 surrounding counties in North Central Ohio. Approximately 50 percent of the Class I (fluid) sales from this plant are made within Richland County. About 10 percent of such sales are made in each of the adjacent counties of Crawford, Knox, and Huron and small volumes are sold in Marion, Morrow, Erie, and Ashland Counties.

More than six percent of the Class I milk packaged at the Mansfield regulated plant is moved to a distributing plant located at Findlay, Ohio. This milk along with milk which is packaged in a Toledo plant, operated by the same handler, is distributed on retail and wholesale routes from the Findlay plant. The volume of milk from the Toledo plant is equal to about three times the volume originating in the Mansfield

plant. A substantial part of the supply of raw milk for the Toledo plant originates on farms located in the States of Indiana and Michigan and moves across State Lines. This milk from the Toledo plant is subject to Order No. 30 regulating the handling of milk in the Toledo, Ohio, marketing area.

Disposition of milk from the Findlay plant is made in Findlay, Lima, Tiffin, and surrounding territory in competition with unregulated milk from the Tiffin market and in competition with milk subject to regulation under the Lima, Toledo, and Cleveland Federal orders. Milk processors located in the Tiffin market procure their milk supplies from dairy farmers in competition with regulated handlers under the Toledo, Lima, and Cleveland Federal orders.

Packaged milk equal to more than 10 percent of Class I milk in the Mansfield regulated plant is moved to a distributing plant in Bellefontaine, Ohio, and disposed of in surrounding territory. Some of this milk is disposed of in competition with milk subject to regulation under Federal Order No. 71 regulating the handling of milk in the Dayton-Springfield marketing area. A substantial portion of the milk for the Dayton-Springfield marketing area originates in the State of Indiana.

Buttermilk and cottage cheese processed in a Toledo plant, is disposed of by the operator of the regulated Mansfield plant from this plant and also his plants located in Toledo, Bellefontaine, and Findlay. Some of the raw milk used to produce these products is purchased in Indiana and Michigan. Similar products disposed of by unregulated distributors in the proposed marketing area are disposed of in competition with these products. Milk and other milk products packaged in the Toledo plant is disposed of also in Indiana and Michigan.

Milk from the Mansfield regulated plant, which is distributed directly from this plant on retail and wholesale outlets, is sold in competition with milk disposed of from a regulated plant located at Shelby in Richland County. Milk supplied by unregulated plants located in the City of Marion and Richland County is sold in competition with milk from each of these regulated plants. The Shelby plant is subject to Order No. 75 regulating the handling of milk in the Cleveland, Ohio, marketing area. Some of the packaged milk which is distributed by the Shelby plant is packaged in a Lima plant of this handler which is also subject to Order No. 75. This milk is sold not only in competition with unregulated milk from Marion and Mansfield but also in the City of Tiffin and surrounding areas. A portion of the milk packaged in the Lima plant is received from farms located in Indiana.

A major portion of the milk supply for the Mansfield regulated plant is procured from local producers, some 250 located in Richland and surrounding counties. Unregulated distributors in Marion and Richland County procure their milk supplies in competition with the Mansfield regulated plant. They also procure

milk from farmers in competition with the Cleveland regulated plant, located at Shelby, and in competition with milk moved directly from farms in this area to plants located in the Cleveland, Akron, and Columbus, Ohio, regulated marketing areas. The balance of the milk supply for the Mansfield regulated plant is received from a combination receiving and processing plant located at Bluffton, Ohio, in Allen County on the edge of the Lima marketing area. Milk at the Bluffton plant is procured from dairy farmers in competition with milk subject to regulation under the Toledo Federal order and with other milk subject to the Lima order. The milk under all of the orders, heretofore referred to, has been found to be in the current of or affects interstate commerce in milk.

Grade A milk from the Toledo marketing area, at times, also is received in the Bluffton plant for the production of cream and skim milk all or a part of which is moved to the Toledo plant of this distributor. Some of the Toledo milk which is, at times, received in the Bluffton plant originates from a receiving plant located in Indiana. Official notice is hereby taken of the recommended decision on proposed amendments to the order regulating the handling of milk in the Toledo, Ohio, marketing area issued January 24, 1957 (22 F. R. 556). Milk over and above the Class I needs of this handler for the Toledo and Mansfield plants is intermingled in the Bluffton plant and processed into manufactured products, such as condensed milk and dried skim milk solids. These products are disposed of in competition with similar manufactured products which originate in the State of Ohio and in other States.

Distributing plants located in Marion, Ohio, also purchase milk in competition with a milk plant located at Prospect, Ohio, about 10 miles from Marion. A substantial portion of dairy farmers located in Marion County deliver their milk to the Prospect plant. At the time of the hearing, the milk received at the Prospect plant was being moved in interstate commerce to the Pittsburgh, Pennsylvania, market.

For the above stated reasons, it is concluded that the handling of milk for the Marion, Tiffin, and Richland County markets are in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products.

(b) *Need for an order.* Marketing conditions in the area recommended to be included under regulation justify the issuance of a marketing agreement and order. The need for an order in the additional areas arises primarily from three conditions: (1) Problems associated with methods of pricing milk of dairy farmers at unregulated plants; (2) problems arising from unregulated handlers procuring and selling milk in competition with regulated handlers; and (3) problems associated with pricing milk at a regulated plant in Mansfield, Ohio.

There is no marketwide plan in any of the markets proposed to be added in the North Central Ohio marketing area whereby dairy farmers are paid for their milk in accordance with its use. Rather,

payment is generally made on basis of the blend price prevailing in the area at plants regulated under surrounding Federal orders. Dairy farmers have no means of determining how their milk is utilized at the various unregulated plants to which they deliver. One large distributor in Mansfield has used a base-excess payment plan which proved unsatisfactory to farmers because they could not determine or check the bases established or the utilization of milk in the plant.

The blend price which unregulated distributors use as the basis for paying dairy farmers for milk is, of course, the reflection of the classified price plan under which the regulated handlers purchase their milk from producers. Under a classified price plan, all handlers are charged the same price for all milk disposed of for fluid consumption (Class I milk). This price is higher than prices paid for milk for manufacture by an amount which is necessary to get an adequate supply of graded milk produced and delivered to the market. The higher price for Class I milk is to reflect the added costs incurred by producers in meeting the higher sanitary standards, providing a year-round supply sufficient to meet the daily and seasonal variations in sales and transporting their milk the longer distances which usually characterize a city milk supply. Milk not needed for fluid purposes is priced at the Class II price.

Payment for milk at the blend price by unregulated distributors may result in either underpayment or overpayment of dairy farmers according to the principle of classified pricing. A Class I (fluid) utilization (per centum) greater than the Class I utilization (per centum) which the blend price represents results in underpayment. A Class I utilization less than the Class I utilization which the blend price represents results in overpayment. In the proposed area, the Class I utilization of some large unregulated distributors has been higher than that of regulated handlers but the prices received by the dairy farmers supplying them milk have been substantially the same as the prices received by producers of regulated milk. During the most recent 12-month period prior to June 1956, the annual average Class I utilization (unweighted average of monthly percentages) in the regulated plant in Mansfield was 78 percent as compared with 94 percent in one of the principal unregulated plants in Mansfield and 92 percent in an unregulated plant in Marion. Hence producers of unregulated milk are not receiving the utilization value for their milk.

The difference in the cost of milk for fluid distribution resulting from the practice of unregulated distributors paying their dairy farmers on the basis of the blend price announced for their regulated competitors causes serious problems where regulated and unregulated distributors of substantial volumes of fluid milk are in direct competition in the procurement and sale of milk. Economic forces will tend to be set in motion which, in the final analysis, will tend to depress returns to dairy farmers of both regulated and unregulated milk

below the level consistent with prevailing market conditions. When unregulated distributors have a higher Class I utilization than their regulated competitors, the former have an obvious advantage which may be used either in the procurement or sale of milk or both. This advantage may be gained at any particular time simply by limiting milk receipts to Class I needs. Then this advantage may be used for the expansion of fluid milk sales of unregulated milk and a consequent decrease in Class I sales of regulated milk. The continuation of this process results in increasing quantities of unregulated milk being paid for at a price below its classified value and in the depression of the blend price for regulated milk through the loss of Class I outlets.

Milk is distributed throughout most of the proposed area by companies which operate plants in more than one market. Some of these companies limit their distribution from an individual plant to retail and wholesale outlets within the market and nearby areas. Others have centralized their bottling operations and service distribution points located in a number of consuming centers. Some of these companies have all of the milk distributed by them subject to regulation under this or other Federal orders. Some companies have both regulated and unregulated plants while others have no plants subject to regulation. Operators with multiple plant operations have the opportunity to reorganize or transfer sources of milk supplies and the servicing of sales outlets among plants within their organization. The differences in the extent of regulation among such organizations results in different degrees of opportunity for shifting supplies and sales among plants to take advantage of any economic gain in the procurement of milk from dairy farmers which may result from the lack of regulation. This tends to destroy the effectiveness of the existing regulations and may result in disorderly marketing of the producer milk under regulation and of the unregulated milk of dairy farmers supplying the unregulated plants as well.

The regulated plant at Mansfield represents a special problem involving location adjustments under the present order. This plant receives about one-third of its milk supply from a receiving station at Bluffton, Ohio, and about two-thirds directly from producers located in Richland and surrounding counties. It is regulated under the Lima order by virtue of Class I sales in Findlay which represent about seven percent of the Mansfield plant's Class I sales. The minimum price for producer milk utilized as Class I under the Lima order is the Cleveland Class I price minus the location adjustment rate applicable to a Cleveland pool plant located at Lima. This recognizes the fact that Cleveland and Lima draw their milk from a common supply area in which Cleveland is the dominant market and producers' milk for fluid use must be priced accordingly. The location adjustment rate on Class I and Class II milk for Cleveland pool plants is 20 cents per hundred-weight of milk if the pool plant is located

more than 60 miles but not more than 74 miles from the Public Square in Cleveland, by the shortest highway distance, and two cents additional for each additional 14 miles or fraction thereof. Mansfield is approximately 72 miles southwest of Cleveland. Lima is approximately 150 miles southwest of Cleveland. Thus, direct-shipped milk to Mansfield disposed of as fluid milk in Mansfield and priced on basis of the location of Lima results in underpayment to producers of about 12 cents per hundredweight. The effect is multiplied because, as previously stated, some unregulated distributors in this area tend to base their pay prices on the blend price of the regulated Mansfield plant.

A marketing agreement and order would contribute substantially to the improvement of the problems and conditions complained of by producers and would tend to effectuate the declared policy of the Act. A classified price plan based on the audited utilization of handlers, would be applied to all milk of proponent producers which is received at regulated plants. This would provide a uniform system of minimum prices to handlers in accordance with the use of the milk and a plan for the fair and equitable division of proceeds from the sale of milk among producers. Under an order, the market administrator will check the butterfat test and weights of producer milk delivered by shippers who are not receiving these services from a cooperative association. Also, publication by the market administrator of complete data on prices, supplies and utilization of milk will result in greater understanding of market conditions by producers and the public and will promote orderly marketing.

(c) *Marketing area.* The scope of the regulation is determined, among other things, by the definition of the marketing area. Under present day practices of milk distribution in many areas, it is not necessary or feasible to define a marketing area so as to include all of the territory where a regulated handler may compete for retail and wholesale outlets for his milk and still afford a reasonable and economical basis for the pricing and pooling of milk of those dairy farmers who need and request the regulation. This is particularly true in this North Central Ohio area which has been proposed for regulation by the different parties. This area is composed of both rural territory and a number of towns and medium size cities which receive their fluid milk supplies from both local and more distant plants. The area under consideration is made up of a number of so-called secondary markets located within the Cleveland milkshed.

In some of the markets in the over-all area proposed, i. e., Marion, Mansfield, and Tiffin, producers have organized and actively engaged in bargaining for the sale of their milk and in other marketing activities. In some areas, the producers associated with a given market or a plant have no formal organization for participating in bargaining activities and they made no appearance at the hearing.

Under such circumstances and upon the basis of this record, it is concluded that the area to be regulated at this time

should be held to the minimum that will be necessary to correct the major problems presented by proponent producers. This may be accomplished by defining the marketing area to include the principal centers of consumption in the area proposed by producers wherein health ordinances require the distribution of Grade A milk. Accordingly, this additional territory will include the Cities of Tiffin and Marion and Richland County. Other territory proposed should not be included in the marketing area.

In the territory omitted to the north near Lake Erie, where sales to resort areas make up a substantial proportion of annual sales, problems associated with pricing and pooling of milk are substantially different than in the remainder of the proposed territory. In the other territory, which is not included in the marketing area, sales by presently unregulated plants for the most part are confined to more local areas. Many of these plants are relatively small, individually owned, and in several cases, family operated. The producers of milk for the markets not included have either indicated no need or fail to support the application of the regulation of the handling of their milk. In addition, in some of the proposed counties, including Seneca, Marion, and Auglaize, there are no county-wide Grade A milk ordinances in effect.

Economy and expediency in the administration of regulation can be achieved by including the recommended territory in the Lima, Ohio, marketing area. The handling of milk under the present Lima order and in the new territory recommended is closely related, as previously demonstrated, through overlapping sales and procurement areas. The health regulations applicable to milk sold in these markets are patterned after the U. S. Public Health Service's model for Grade A milk and are substantially equal. The Richland County ordinance, however, is patterned after the 1955 code and requires milk from brucellosis free herds while the other ordinances follow the 1953 code and do not have this requirement. As will be discussed more fully hereinafter, the provisions of the Lima order, modified as recommended herein, are appropriate and economically sound for the regulation of the handling of milk both for the present marketing area and for the new territory recommended. No significant advantages could be gained by issuing a separate order for the markets in the new territory. The expanded marketing area should be redesignated the North Central Ohio marketing area.

2. *Method of pricing Class I milk.* The method of applying Class I prices under the order should be changed to align prices at individual pool plants with Class I prices under the Cleveland order.

The minimum Class I price for producer milk under the present Lima order at all regulated plants, regardless of their location, is the Cleveland marketing area Class I price minus the location adjustment rate which would be applicable to a Cleveland pool plant located in Lima, Ohio. As heretofore shown, this method of pricing has resulted in uneconomic

pricing of milk at some plants regulated by the present order.

Under the Cleveland order, the Class I price and uniform prices to be paid to producers are determined for plants located within a radius of 40 miles from the City Hall in Cleveland. The respective prices for milk received at plants located beyond this radius are adjusted by location differentials based on the distance the plant is located from Cleveland. Official notice is hereby taken of the final decision on amendments to the order regulating the handling of milk in the Cleveland, Ohio, marketing area issued January 17, 1957 (22 F. R. 448).

Producers proposed that the Cleveland Class I price and the schedule of location adjustments on Class I milk be applied to individual pool plants under the proposed order. Under another proposal for a separate order, Class I milk would be priced at the Cleveland basic formula price plus a Class I differential. The Class I differential was to be lower than the f. o. b. Cleveland differential to equalize the Class I price with the corresponding Cleveland Class I price which would prevail at plants located in the same area.

The recommended marketing area is located in a milk supply area which is a common source of supply for both the Cleveland market and the markets in the proposed area. In this procurement area, Cleveland is the dominant market. Because of the competition in both the procurement and sale of milk with the Cleveland market, as heretofore discussed, milk at the various locations in the proposed area should be priced in accordance with its alternative value for the Cleveland market. This can best be done by establishing the Class I price for milk disposed of in the proposed marketing area at the pool plant where the milk is received and at the same rate as the f. o. b. Cleveland Class I price less the location adjustment which would be applicable at a Cleveland plant at the same location as the pool plant regulated by this order. This method of pricing will preclude problems of price alignment which would be involved under the proposed order if prices were not tied directly to the Cleveland pricing plan. The recommended change will assure identical Class I prices to handlers from month to month at all plants similarly located regardless of the order under which the plant may be subject to regulation.

Butterfat differentials. The Class I and Class II butterfat differentials should be changed. The present Class I differential per 0.1 per centum variation of butterfat in milk above or below 3.5 percent is equal to 15.5 percent of the price per pound of 92-score bulk creamery butter at Chicago during the month. The Class II butterfat differential is equal to 11 percent of the butter price. Producers proposed that the Class I factor (0.155) be changed to (0.125) and the Class II factor (0.110) be changed to (0.115). One handler testified at the hearing in favor of a factor of 0.130 for Class I milk.

Factors of 0.130 for Class I milk and 0.115 for Class II milk should be adopted. These factors are more reasonable for

use in determining the respective differentials than those applied in the present order. These factors will more nearly reflect the value of butterfat in each class and will provide a desired relationship in the resulting values for skim milk and butterfat in each class. Furthermore, the Class I price under the recommended order is to be based on the Cleveland Class I price, as heretofore stated. Class I butterfat differentials under the Cleveland order are determined by the use of the factor 0.130 and Class II and Class III differentials are determined by a factor of 0.115. Adoption of these factors will facilitate maintenance of reasonable class price relationships among plants regulated by the two orders.

Class II prices. The Chief Dairy Products Company plant at Upper Sandusky, Ohio, should be used, in conjunction with those plants used under the Lima order, to determine minimum prices to be paid by handlers for producer milk classified as Class II under the recommended North Central Ohio order.

The Lima order specifies a group of five dairy manufacturing plants to be used in determining the Class II price. However, one of these plants discontinued operation prior to the hearing and only four plants have been used subsequently. Some handlers proposed at the hearing that two plants, the Chief Dairy Products Company plant at Upper Sandusky, Ohio, and the Carnation Milk Company plant at Bellville, Ohio, be used to supplement the plants used in the Lima order. The Chief Dairy Products Company plant has been paying prices for milk comparable to those paid by the plants currently used in the Lima order and is an appropriate element with which to broaden the base of Class II prices under the recommended North Central Ohio order. The Carnation plant at Bellville should not be used at this time. The record contains no information on prices paid for milk at this plant and there is no appropriate basis for appraising it as an element of Class II pricing.

Equivalent prices. Provision should be made for the use of an equivalent price, if for any reason, a price quotation required by the order for computing class prices or for other purposes is not available. A particular price quotation required under the provisions of the order may be discontinued or not available in the manner or at the time described by the order. Should such contingencies materialize, equivalent pricing will permit the intent of the pricing provisions of the order to be carried out without interruption until such time that the order may be amended.

3. The individual handler type pool should be continued in the order for distributing to producers proceeds from the sale of milk to handlers and more detailed provisions should be made for the classification of milk transferred between pool plants.

The individual handler pool is applied under the present Lima order and was incorporated in the order November 1, 1954. Prior to that date a marketwide pool was used starting with the promul-

gation of the order August 1, 1949. Producers in the present Lima area and the proposed expanded area favor retention of the individual handler pool.

Certain distributors in the Marion and Mansfield markets proposed that marketwide pooling be used in conjunction with a separate order for their markets. This type of pooling also was favored by a handler operating plants in Lima and Shelby, Ohio, both of which are regulated under the Cleveland order.

Under either type of pooling, each handler's obligation for producer milk is the same. Each handler pays for milk at class prices in accordance with the quantities of milk utilized in each class. Under the individual handler pool, producers supplying each handler are paid the blend price resulting from that handler's obligation. Under the marketwide pool a marketwide uniform price is determined f. o. b. a designated point in the marketing area from the obligations of all handlers included in the pool. Each handler is required to pay each producer supplying him milk this uniform price subject to adjustments for the location of the pool plant where the milk is received. Equalization in the cost of milk among handlers in accordance with its class usage is made through an equalization fund. Under an individual handler pool, the Class I price may be adjusted for the location of the pool plant and the pooling process simplified.

The individual handler type pool should be applied under the order for the proposed enlarged marketing area on an individual pool plant basis. Most distributors in the proposed area handle their own reserve supplies of milk. Little or no milk has been transferred in bulk between distributing plants. There is no evidence to indicate that particular plants perform the function of regularly handling reserve supplies of milk for other distributors or serve as a source of raw milk supplies during periods of seasonally low production. Equal sharing of returns from milk by all producers supplying the total marketing area, as would be provided by a marketwide pool, or the pooling of milk at a system of distributing plants operated by the same handler under the individual handler pool, would not insure equality among producers in an area so geographically segmented. It could, in fact, result in excesses of milk accumulating in one segment of the marketing area at the same time that supplies are inadequate to meet fluid milk requirements in other segments. All of these factors indicate the need and efficacy of pricing and pooling producer milk at individual pool plants.

Provisions of the order for the classification of milk transferred between pool plants should be formulated to assist in effectuating the proposed pooling arrangement under the order. Transfer provisions are provided in the order to supplement the class definitions for milk disposed of from pool plants. The primary function of the provisions relating to the transfer of fluid milk products between pool plants is to promote free movement of milk between plants and

at the same time to insure that producer milk is assigned to available Class I utilization to the fullest extent possible and in accordance with sound marketing practices.

It is customary for milk in consumer packages to be transferred between certain pool plants in the proposed marketing area. Provision should be made to classify such milk as Class I milk at the plant where the milk is packaged, so that producers furnishing it will realize the Class I price and thereby encourage a supply of milk in accordance with the Class I needs of the pool plant.

Fluid milk products transferred in bulk from a distributing plant which is a pool plant to another distributing plant which is also a pool plant should be classified as Class II milk. Such classification should be limited to the Class II utilization at the transferee plant after first assigning allowable producer milk shrinkage, other source milk, and milk received from supply plants and assigned to Class II milk. Any additional milk products so transferred should be classified as Class I milk. As previously indicated, transfers of bulk milk between distributing plants are seldom made in this area. Such transfers, as may occur, will be primarily milk in excess of the fluid requirements of the plant at which it originates. It is reasonable, therefore, that direct receipts from producers and Class I milk from supply plants serving as pool plants should receive priority over receipts from other distributing plants on Class I utilization at the transferee plant.

Transfers of fluid milk products in bulk from a supply plant which is a pool plant to a distributing plant which is a pool plant should be classified on the basis of agreement between the handler operating the supply plant and the handler operating the distributing plant. However, the transfer provisions should not be used so that a higher proportion of producer milk at the supply plant is classified as Class I milk than the proportion classified as Class I milk at the distributing plant during the month. This recognizes the fact that both nearby producers and producers who ship to a supply plant may be integral parts of the distributing handler's market supply and should, at his discretion, share in Class I sales at the distributing plant; but that other groups of producers should not receive advantageous treatment relative to nearby producers, with respect to allocation of Class I sales at the distributing plant. During the period of January-August, producers delivering their milk to a supply plant should, at the discretion of the handler operating the distributing plant, share in Class I sales at the distributing plant on the basis of the quantity of milk that they supplied to such distributing plant for Class I uses during the preceding short production season, even though there was no physical transfers of milk in the current month. These "book assignments" of Class I milk to a supply plant during the flush production season afford a reasonable basis for producers at supply plants to share in the Class I market and thus preserve the availability of their milk for use when it is needed by the handler

during the low production season. Such assignment of Class I milk plus actual transfers, however, should not exceed average monthly transfers as Class I during the immediately preceding September-December period, either absolutely or proportionately. In no event should the Class I milk assigned to a supply plant exceed the quantity of milk received from producers at the supply plant during the month.

All skim milk and butterfat transferred from a pool plant to a producer-handler in the form of a fluid milk product should be Class I milk. By virtue of the type of operation involved, such supplemental supplies of milk are presumed to be needed by the producer-handler for fluid use. No changes are recommended in the method of classifying milk transferred or diverted from a pool plant to a nonpool plant.

The proposed method of classifying transfers of milk between pool plants and the pooling of the returns for producer milk is necessary to facilitate and encourage the most economical distribution of the available supplies of producer milk among pool plants and among the different secondary markets in the marketing area.

The blend price for each pool plant should be determined on the basis of milk of 3.5 percent butterfat content, the same as is provided by the present Lima order. The average butterfat test of producer milk for 1955 ranged from 3.7 to 4.0 percent. The butterfat differential used to adjust the blend price paid each individual producer in accordance with the butterfat content of his milk should be the average of the Class I and Class II butterfat differentials weighted, respectively, by the pounds of butterfat in producer milk classified in each class at the pool plant. Handled in this manner the resulting blend price received by the producer reflects the separate values of skim milk and butterfat based on the class usage of each.

4. An eligible milk quota plan should be adopted.

The present Lima order offers only minor incentive, through seasonal differences in Class I prices and consequent blend prices paid producers, for more even production of milk throughout the year. Class I prices under the Lima order are based on Class I prices under the Cleveland order. The seasonal differences in Class I differentials under the Cleveland order were reduced following the adoption of an eligible milk quota plan in 1955. Consequently, seasonal differences in blend prices under the Lima order have been reduced since that time. Because of the necessity of maintaining Class I prices under this order in close alignment with those under the Cleveland order, it is not feasible to apply greater seasonality in class prices as a means of encouraging more even production of milk for this area.

The seasonality problem arises from the fact that consumption of fluid milk products is relatively constant throughout the year while production of milk is usually largest in the spring months when natural factors are more favorable to milk production. Most milk distribu-

tors desire and attempt to develop a large enough supply of milk to meet Class I sales in the months of lowest production. Under usual conditions and without an effective seasonal program, this results in burdensome excesses of milk during the spring months. For example, during May of 1955, producers' receipts under the Lima order exceeded Class I sales by nearly 60 percent while in November receipts exceeded Class I sales only 10 percent. Minimizing the seasonal excess production will reduce the longer term needs for extra transportation and processing facilities for handling excess milk and result in more economical utilization of marketing resources. Additional means should be adopted for this area, therefore, to encourage a seasonal pattern of production more in accord with market needs of milk for fluid disposition.

Producers proposed an "eligible and ineligible milk plan" which is known as the base and excess plan in most markets. However, to eliminate the possibility of confusion on the part of producers, the former terminology will be used herein. The essence of the plan is that each producer establishes an eligible milk quota during the low production months. In the following flush production season he is paid a higher price for a quantity of milk delivered up to the amount of his eligible milk quota than for milk in excess (ineligible milk) of such quota.

Both producers and handlers generally favor an even production plan. Certain differences in opinion were expressed at the hearing, however, on the period which should be used to establish an eligible milk quota and the length of time that these quotas should apply. Producers favor the Cleveland quota-forming period composed of October, November, and December and a quota-operating period of April, May, and June. One handler proposed a quota-forming period consisting of a single month of the producers' lowest production and a quota-operating period consisting of the remainder of the year. The unregulated distributors of Mansfield and Marion proposed a quota-forming period of August through December.

In view of the extent of competition for milk supplies between the Cleveland market and the markets in the recommended marketing area, it is desirable to use quota-forming and operating periods under the recommended order which conform closely to those in the Cleveland order. Analysis of the monthly receipts and utilization in the present Lima marketing area indicates the feasibility of using the Cleveland quota-forming and operating periods. Monthly utilization percentages, for the markets, derived from the record evidence, indicate, however, some merit in handlers' proposal of including the months of August and September, particularly September, in the quota-forming period. This should not be done, however, before the recommended order has been in operation long enough to afford more adequate data for appraisal of seasonal supply-sales relationships throughout the area. It would seem de-

sirable also to adopt such a plan only after similar changes are made in the Cleveland order. The proposal for a one-month quota-forming period should not be adopted because under such a plan producer milk quotas would be determined by chance events and in retrospect to a relatively large degree.

The proposed plan should be designed to permit regular suppliers of Grade A milk to earn eligible milk quotas and receive priority on the higher valued Class I sales during the flush production season. Each producer's eligible milk quota should be calculated by dividing the producer's total deliveries of Grade A milk to a pool milk plant during the quota-forming period by the number of days from the first day of delivery to the end of the quota-forming period, but not less than 30. It is not reasonable to assign an eligible milk quota to a producer who fails to supply milk to a pool plant for at least 30 days during the quota-forming period or who first enters the market following the short production period. This is the period when milk is most needed to fulfill handlers' Class I requirements.

Producers should be paid during the quota-operating period on the basis of the Class II price for deliveries of milk in excess of their eligible milk quotas (daily quotas multiplied by the number of days in the month). However, if total deliveries of quota milk at a pool plant are less than the pool plant's Class I utilization, the total payment to producers should reflect the amount of ineligible milk needed to fulfill Class I sales. If, on the other hand, Class I sales are less than quota deliveries, producers should receive a blend price for quota milk based on the additional amount of milk within their quota which is classified and priced in Class II milk. Under such circumstances, the blend price for quota milk will be less than the Class I price.

Audit adjustments and any balance carried forward from one month to the next as a result of rounding blend prices for the pool plant should not result in an eligible milk price which is in excess of the Class I price. Accordingly, provision should be made for the ineligible milk price to be increased up to the eligible milk price and any balance of value prorated between eligible and ineligible milk.

Producers without eligible milk quotas should receive the ineligible milk price for all of their milk during April, May, and June. During all other months, all producers delivering milk to a pool plant should receive the blend price based on total receipts of producer milk at such plant.

Operation of the proposed eligible milk plan requires certain rules with respect to the transfer of quotas to provide reasonable administrative workability and at the same time preserve the effectiveness of the plan. Because each producer must establish a new quota each year and because the quotas are applied during only three months of each year, there is no need to provide for the transfer of quotas under usual circumstances. Transfer of eligible milk quotas, there-

fore, should be limited to cases of death of a producer where a member of the immediate family carries on the dairy operation on the same farm. In this area, tenants frequently change farms during the period between the quota-forming and quota-operating period. Provision should be made, therefore, for the transfer of quotas in cases where partnerships are dissolved. The proposed transfer provisions should be and are the same as those applied under the Cleveland order.

5. The entire order should be redrafted to change several definitions, add more specificity in the provisions with respect to the reporting and accounting for milk, and to incorporate a number of conforming and clarifying changes throughout the order.

A number of changes should be made in the order to designate more clearly what milk and what plants would be subject to the regulation and the application of the order provisions to them. This can best be done by providing a number of new definitions to set forth the categories of persons, plants, milk and milk products. New definitions should be added for "distributing plant", "supply plant", "pool plant", "nonpool plant", and "fluid milk product". The definitions of "Grade A milk", "producer", "producer milk", "handler", "producer-handler", and "other source milk" should be modified.

The term "distributing plant" should include all plants where milk is processed and packaged and from which fluid milk products are disposed of in the marketing area as a fluid milk product either on the premises or to wholesale and retail stops, including milk disposed of to such outlets through vendors. The term "supply plant" should mean a milk plant other than a distributing plant which is approved by the appropriate health authority in the marketing area to supply milk, skim milk or cream to a distributing plant(s) for disposition as Grade A milk in the marketing area.

The term "pool plant" should include all distributing plants and all supply plants which are to be fully subject to regulation under the order and whose receipts of milk from producers will be subject to the pricing and payment provisions of the order. A "pool plant" should be defined to include a distributing plant from which more than 10,000 pounds of fluid milk products are disposed of in the marketing area during the month. The term "pool plant" should also include supply plants from which shipments of milk, fluid skim milk, or cream are made to a distributing plant on seven days or more during the month. It should be provided, however, that supply plants which qualify as pool plants during at least three of the four months of September through December may retain such status during each month of the following period January through August without meeting the minimum delivery requirements for the purpose of making "book assignments" of Class I milk to such plants as heretofore discussed under Issue No. 3.

In the recommended marketing area, there are a few plants which would otherwise be subject to full regulation

under the definitions of the Lima order even though the sales of milk from such plants in the recommended marketing area are a very minor portion of total sales in the area. Full regulation should not be extended to these plants at this time. This may be accomplished by excluding from full regulation distributing plants which dispose of 10,000 pounds or less fluid milk in the marketing area during the month and supply plants which make shipments on less than seven days during the month to distributing plants which are pool plants, except during the months of January through August under the conditions previously discussed. Operators of such plants will be handlers under the recommended definitions and required to make such reports to the market administrator as may be required to establish their status under the order.

Provision should be made also for exclusion from this regulation under certain conditions of supply plants or distributing plants which would be subject to the pricing and payment provisions of another order issued pursuant to the act. Plants which dispose of fluid milk products in more than one marketing area need not be subject to duplicate regulation to accomplish the declared purpose of the act. It is reasonable and economically sound that such plants be regulated under the order regulating the handling of milk for the marketing area where the largest proportion of the plant's Class I milk is disposed of. This determination should be made on basis of sales during the current and each of the immediately preceding three months. The use of this four-month period will reduce the possibility that plants which supply nearly equal amounts of milk to the North Central Ohio and other marketing areas will be subject to different orders from month-to-month and at the same time avoid jurisdictional conflict with nearby orders.

The term "nonpool plant" and "fluid milk product" have been added to the recommended order and the word "Department" substituted for "U. S. D. A." These new terms are recommended because their application will facilitate drafting other provisions of the order. Their application will not change the intent of the present Lima order.

The definition of "Grade A milk" should be modified to recognize the different and additional health authorities involved on the milk disposed of in the expanded marketing area. Under the present Lima order Grade A milk must be produced by a person holding a dairy farm inspection permit issued by the Board of Health of Lima of the Allen County General Health District or of Findlay and permitted by such health authority to be disposed of as Grade A milk. This should be changed so that Grade A milk will be milk produced on a dairy farm which is approved by any duly constituted health authority for the production of milk for fluid disposition and which milk is permitted by the appropriate health authority in the marketing area to be labeled and disposed of as Grade A milk in the marketing area.

Definitions of "producer", "producer milk", "handler", and "producer-hand-

ler" should be changed to incorporate the necessary references to the other new definitions and to exclude producer-handlers and the milk produced by them from the producer and producer milk definitions. The latter is accomplished by excluding a producer-handler from the producer definition. Because milk from other regulated markets, at times, may be diverted directly from the farm to a pool plant(s) under this order, provision should be made to exclude such dairy farmers as producers under the order if the milk is reported under the other order as diverted and is subject to the pricing and payment provisions of such order. Otherwise, such dairy farmers would be producers under both orders.

Milk is sometimes diverted directly from the farm to nonpool plants. In order to distinguish between the milk of producers who may be temporarily diverted and those who may be more or less permanently diverted from the fluid market, some limitation on the length of time that milk may be diverted and still be considered as producer milk under the order is desirable. Based on the conditions in this market, it is concluded that milk of a dairy farmer which is diverted to a nonpool plant and which is in excess of one-third of the total deliveries from such dairy farmer during any month, except during the months of March, April, May, and June, when receipts of milk from producers are relatively large in relation to Class I sales, should not be considered as producer milk under the order. Milk of a dairy farmer which is diverted to a nonpool plant and which is in excess of one-third of his deliveries during July through February is not sufficiently associated with this market to be priced and pooled with other producer milk. Free diversion of milk during March through June will facilitate the economical disposal of seasonal reserve supplies. In view of the recommendation to change the method of applying Class I prices in the order, provision should be made to consider milk which is diverted to have been received at a pool plant at the same location as the plant from which it was diverted for the account of a cooperative or a proprietary handler.

The definition of "other source milk" should be modified to clarify its meaning and to specify in the definition that it includes all milk utilized in the operations at a pool plant except producer milk, fluid milk products received from other pool plants and inventory of fluid milk products on hand at the beginning of the month. Other source milk represents all skim milk and butterfat used in a pool plant which is not subject to the pricing provisions of the order during the month. It will include all fluid milk products from plants other than pool plants and all manufactured dairy products from any source which are repackaged or converted into another product in the pool plant during the month. It will include those manufactured products from a pool plant's own production which are reprocessed or converted into another product during the same or a later month.

Some handlers in the market produce condensed milk, nonfat dry milk and other manufactured milk products. Some of these products are reused in the pool plant where produced or are disposed of to other pool plants. Operators of other pool plants may purchase solids from outside sources. Condensed solids or nonfat dry milk may be used for reconstituting certain fluid milk products or to fortify skim milk drinks. Such solids are required by the health regulations to be made from Grade A milk and should be classified as Class I milk when disposed of in a fluid milk product the same as all other skim milk in Class I milk. There appears to be no reason why one portion of the solids nonfat contained in Class I products should be classified differently from another portion in the market. Two pounds of skim milk disposed of in any reconstituted or fortified fluid milk product, therefore, should be accounted for as an amount equal to the nonfat milk solids contained in such product plus the water content normally associated with such solids in the form of whole milk.

To promote uniformity in the cost of milk among handlers and to effectuate the established principle of allocating current receipts of producer milk to Class I utilization to the fullest extent, the skim milk in other source milk in the form of a manufactured product, likewise, must be accounted for on the basis of the nonfat solids plus the water normally associated with such solids in the form of whole milk. This accounting procedure will have no effect on the net classification of other source milk used in Class II milk products.

The change in definition of other source milk and its application to all manufactured products on a milk equivalent basis, whether such products come from milk from producers or from other sources, necessitates providing that shrinkage be determined on other source milk received in the form of fluid milk products. The two percent limitation on the amount of shrinkage classified as Class II milk should apply, therefore, only to other source milk received in bulk in the form of fluid milk products the same as that applicable to producer milk. Little or no shrinkage is experienced on fluid milk products received and disposed of in consumer packages. Because skim milk and butterfat is accounted for in Class II milk products on a used-to-produce basis, any shrinkage is included in the amount of skim milk and butterfat reported in the manufactured products used for such manufacturing purposes. To allow unlimited shrinkage on other source milk, including fluid milk products in consumer packages and manufactured products and limit shrinkage on producer milk would provide a basis for inequality in the cost of milk among handlers who use other source milk and those who do not. Thus, it is reasonable to preclude this possibility of inequality. Furthermore, without the recommended provisions, producer milk could be assigned inequitably to a lower classification under circumstances where substantial amounts of milk are unaccounted for

and the handler has received other source milk.

By incorporating the proposed definition of other source milk together with conforming changes, the order will be more specific with respect to the method of accounting for such milk. Identical accounting procedures will be followed by all handlers whether or not manufactured products (Class II) which are used in the handler's pool plant are converted from producer milk or purchased from outside sources. The skim milk and butterfat used to produce manufactured products are now and should continue to be considered as disposed of when so utilized and therefore not enter into the monthly classification and allocation procedure again, unless such products are repackaged or reused. Records of sales and stocks of such products, however, must be maintained by the handler to facilitate the auditing program of the market administrator and substantiate current usage of such products. Any other source milk, including that derived from manufactured products will continue to be allocated first to the available Class II utilization. The application of the new definition of other source milk in conjunction with other provisions of the order will provide for the allocation of producer milk to Class I in each month to the fullest extent that producer milk is available from current receipts or beginning inventory of fluid milk products.

Because handlers may have inventories of milk and milk products on hand at the beginning and end of each month, such inventories must enter into the accounting procedure for current receipts and utilization of producer milk. The present order is silent in this respect. Inventory variations have been classified in Class I milk. Provision should be made for month-end inventories of fluid milk products, whether in bulk or packaged form, to be classified as Class II milk as a temporary classification. Manufactured milk products (Class II) should not be included in inventory accounting because the skim milk and butterfat used for such products are accounted for in the month when such products are manufactured.

Because handlers frequently use other source milk in their operations, the inventory accounting procedure should provide for producer milk from inventory to have prior claim on Class I utilization over receipts of other source milk in the same manner as current receipts of producer milk. Because inventories of fluid milk items are to be accounted for at the end of the month in Class II milk, as a temporary classification, it is necessary to provide a method for handling producer milk in inventory which is allocated to Class I milk in the current month but which the handler accounted for in Class II milk at the end of the preceding month. The higher use value of any fluid milk product from beginning inventory of producer milk which is disposed of as Class I milk should be reflected in returns to producers. Such milk should be priced the same as a current receipt of producer milk. These goals may be accomplished, through the accounting procedure, by considering the

opening inventory as a receipt in that month and subtracting such receipt, under the allocation procedure, in series, starting with Class II milk, following the subtraction of other source milk and receipts from other pool plants. To the extent that the opening inventory is allocated to Class I milk and there was an equivalent amount of skim milk and butterfat in producer milk classified in Class II milk in the previous month (after allocating allowable producer milk shrinkage and other source milk), a reclassification charge should be made at the difference between the Class II price in the previous month and the Class I price in the current month. Handled in this manner, milk from inventory will be priced to handlers identically with milk derived from current receipts of producer milk during the month. This method of accounting for inventory will result in equality in the cost per hundredweight of milk among handlers and returns to producers irrespective of whether or not such milk is from opening inventory or is a current receipt.

By incorporating the proposed changes, receipts of milk will fall within four categories as follows:

- (1) Producer milk;
- (2) Milk from pool plants;
- (3) Inventory of fluid milk products; and
- (4) Other source milk.

The order should be changed to incorporate references to these categories of milk. The use of these terms will add a desired degree of specificity to the reporting and accounting procedure of the order.

The date by which handlers are required to file monthly reports of receipts and utilization with the market administrator and the date by which the market administrator is required to announce class prices and blend prices should be delayed one day. This will help to overcome difficulties of handlers in filing reports on time when weekends or holidays fall within the first few days of the month and will correspond to the respective dates applied under the Cleveland order. As described earlier herein, Class I prices under the Lima order are based on Class I prices under the Cleveland order.

Proposals to change the amount of allowable shrinkage and to eliminate the provision for partial payments to producers should be denied. There was no evidence which would indicate that the provisions of the present Lima order to which these proposals relate are causing problems for presently regulated handlers. These provisions conform with similar provisions which are used in most Federal milk marketing orders. A proposal for increasing the price of milk used to produce cottage cheese should be denied also. Insufficient evidence was presented at the hearing to warrant adoption of these proposals.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of certain interested parties in the market. These briefs and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions set forth in the briefs are

inconsistent with the findings and conclusions set forth herein, the request to make such findings or to reach such conclusions are denied.

General findings. (a) The proposed marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order. The following order, amending the order, regulating the handling of milk in the North Central Ohio marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the proposed order, as hereby proposed to be amended:

DEFINITIONS

§ 995.1 **Act.** "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 1946 ed. 601 et seq.).

§ 995.2 **Secretary.** "Secretary" means the Secretary of Agriculture, or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary.

§ 995.3 **Department.** "Department" means the United States Department of Agriculture.

§ 995.4 **Person.** "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 995.5 **North Central Ohio marketing area.** "North Central Ohio marketing area", called the "marketing area" in this part, means all the territory within the corporate limits of the Cities of Findlay, Marion and Tiffin and all the territory within the boundaries of the Counties of Allen and Richland, all in the State of Ohio.

§ 995.6 **Grade A milk.** "Grade A milk" means milk produced on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition and which milk

is permitted by the appropriate health authority in the marketing area to be labeled and disposed of as "Grade A" milk in the marketing area.

§ 995.7 **Distributing plant.** "Distributing plant" means a plant or other facilities where milk is processed or packaged and from which Grade A milk is disposed of as a fluid milk product in the marketing area either on the premises or to wholesale or retail stop(s), including sales through vendors.

§ 995.8 **Supply plant.** "Supply plant" means a milk plant, other than a distributing plant, which is a pool plant pursuant to § 995.9 (a), which is approved by the appropriate health authority in the marketing area to supply milk, skim milk or cream to a distributing plant(s) for disposition as Grade A milk in the marketing area and from which milk, skim milk or cream is transferred to a distributing plant(s) during the month.

§ 995.9 **Pool plant.** "Pool plant" means (a) a distributing plant, other than a plant operated by a producer-handler, from which more than 10,000 pounds of fluid milk products are disposed of in the marketing area during the month; and (b) a supply plant during any month in which shipments of milk, fluid skim milk or cream are made to a plant described in paragraph (a) of this section on seven days or more during the month: *Provided*, That a supply plant which qualifies as a pool plant for at least three of the four months of September through December, inclusive, may retain such status during the months of January through August, inclusive, next following, for the purposes of § 995.43 (d) without meeting the minimum delivery requirements described in paragraph (b) of this section.

§ 995.10 **Nonpool plant.** "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 995.11 **Producer.** "Producer" means any person other than a producer-handler, who produces Grade A milk which is (a) received at a pool plant or (b) diverted from a pool plant to a nonpool plant pursuant to the conditions set forth in § 995.12: *Provided*, That this definition shall not include any such person with respect to milk produced by him which is subject to the pricing and payment provisions of another marketing order issued pursuant to the act.

§ 995.12 **Producer milk.** "Producer milk" means only that skim milk and butterfat contained in milk (a) received at a pool plant directly from producers, or (b) diverted for the account of the operator of a pool plant or a cooperative association to a nonpool plant during the months of January through September: *Provided*, That producer milk shall not include the milk of a producer whose milk is diverted to a nonpool plant for more than one-third of the days of delivery during any month other than the months of March through June. Producer milk diverted shall be deemed to have been received at a pool plant at the same location as the pool plant from which it was diverted.

§ 995.13 **Handler.** "Handler" means (a) any person who operates a distributing plant or a supply plant, and (b) any cooperative association with respect to producer milk which is diverted by it in accordance with the conditions set forth in § 995.12.

§ 995.14 **Producer-handler.** "Producer-handler" means any person who operates both a dairy farm(s) and a distributing plant and who receives no milk from other dairy farmers: *Provided*, That the maintenance, care and management of the dairy animals and others resources necessary to produce milk and the processing, packaging and distribution of the milk handled are the personal enterprises of and at the personal risks of such person.

§ 995.15 **Cooperative association.** "Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association: (a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; (b) to have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members; and (c) to have all of its activities under the control of its members.

§ 995.16 **Fluid milk product.** "Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cultured milk products, concentrated milk, sweet or sour cream, eggnog, and any mixture in fluid form of skim milk and cream having more than 8 percent butterfat (except storage cream, aerated cream products, ice cream mix, and evaporated or condensed milk).

§ 995.17 **Other source milk.** "Other source milk" means all skim milk and butterfat contained in or represented by (a) receipts during the month in the form of fluid milk products except (1) producer milk, (2) fluid milk products received from other pool plants, and (3) inventory at the beginning of the month; and (b) products other than fluid milk products from any source, including those produced at the plant, which are reprocessed, repackaged or converted to another product in the plant during the month.

§ 995.18 **Eligible milk.** "Eligible milk" means the amount of milk received by a pool plant from a producer during each of the months of April through June which is not in excess of such producer's daily average quota computed pursuant to § 995.64 multiplied by the number of days for which such producer's milk was received by such pool plant during the month.

§ 995.19 **Ineligible milk.** "Ineligible milk" means the amount of milk received by a pool plant from a producer during each of the months of April through June which is in excess of eligible milk received from such producer during such months, and shall include all milk received from a producer for whom no daily average quota can be computed pursuant to § 995.64.

MARKET ADMINISTRATOR

§ 995.20 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 995.21 *Powers.* The market administrators shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 995.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond effective as of the date on which he enters upon such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 995.76:

(1) The cost of his bond and of the bonds of his employees;

(2) His own compensation; and

(3) All other expenses, except those incurred under § 995.77, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for herein, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to § 995.30 or § 995.31, or (2) payments pursuant to §§ 995.70, 995.71, 995.76, 995.77, 995.78, or § 995.80;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Audit records of all handlers to verify the reports and payments required pursuant to the provisions of this part; and

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 6th day after the end of such month the minimum prices for skim milk and butterfat for each class, computed pursuant to §§ 995.50 and 995.51 for each plant which was a pool plant during the preceding month, and the butterfat differentials computed pursuant to § 995.52; and

(2) On or before the 13th day after the end of such month, the uniform price(s) for each pool plant computed pursuant to § 995.61 and § 995.62 and the butterfat differential computed pursuant to § 995.75;

(i) On or before April 1 of each year, notify each producer and the handler receiving milk from such producer of the daily average quota established by such producer pursuant to § 995.64; and

(j) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this part as do not reveal confidential information.

REPORTS, RECORDS AND FACILITIES

§ 995.30 *Monthly reports of receipts and utilization.* On or before the 8th day after the end of each month, each handler shall report to the market administrator, for each of his pool plants in the detail and on the forms prescribed by the market administrator the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk, including for the months of April through June the pounds of eligible and ineligible milk;

(2) Fluid milk products received from other pool plants;

(3) Other source milk; and

(4) Inventories of fluid milk products on hand at the beginning of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section; and

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe.

§ 995.31 *Other reports.* (a) Each handler, who operates a pool plant, shall report to the market administrator in the detail and on the forms prescribed by the market administrator, on or before the 22d day after the end of each month, his producer payroll for the month which shall show, (1) the name of each producer, (2) the pounds of producer milk received from each producer and the percentages of butterfat contained therein, (3) the amounts and dates of payments to each producer or cooperative association, and (4) the nature and amount of each deduction or charge involved in the payments referred to in subparagraph (3) of this paragraph.

(b) Each handler who operates a supply or distributing plant, not a pool plant, shall report to the market administrator in the detail and on forms prescribed by the market administrator, at such time and in such manner as the market administrator may request.

§ 995.32 *Records and facilities.* Each handler shall maintain, and make available to the market administrator during the usual hours of business, such ac-

counts and records of all of his operations and such facilities as, in the opinion of the market administrator, are necessary to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, and for other contents of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 995.33 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies a handler in writing that the retention of such books and records or of specified books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 995.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat required to be reported for each pool plant pursuant to § 995.30 shall be classified each month by the market administrator pursuant to the provisions of §§ 995.41 through 995.46.

§ 995.41 *Classes of utilization.* Subject to the conditions set forth in §§ 995.43 and 995.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product (other than as livestock feed), and (2) not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat accounted for as (1) used to produce a product other than a fluid milk product, (2) inventory of fluid milk products on hand at the end of the month, (3) disposed of and used for livestock feeding or skim milk dumped, and (4) actual plant shrinkage of skim milk and butterfat allocated to producer milk and other source milk in fluid milk products pursuant to § 995.42 but not in excess of two percent of such receipts of skim milk and butterfat, respectively.

§ 995.42 *Shrinkage.* The market administrator shall allocate shrinkage at the handlers' pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at such plant; and

(b) Prorate the resulting amounts between receipts of skim milk and butter-

fat, respectively, in producer milk and in other source milk received in the form of a fluid milk product in bulk.

§ 995.43 *Transfers*. Skim milk and butterfat disposed of by a handler from a pool plant shall be classified:

(a) As Class I milk if transferred in the form of a fluid milk product in consumer packages to another pool plant;

(b) As Class II milk, if transferred from a distributing plant in the form of a fluid milk product in bulk to another distributing plant which is a pool plant, up to an amount which is not in excess of the Class II utilization at such transferee plant after first assigning to Class II milk, (1) producer milk shrinkage, (2) other source milk pursuant to § 995.46 (a) (3) and the corresponding step of (b), and (3) Class II milk assigned to supply plants pursuant to paragraph (c) of this section. Any remaining amount of skim milk and butterfat so transferred shall be Class I milk;

(c) Except as provided in paragraph (d) of this section, skim milk and butterfat transferred in the form of a fluid milk product in bulk from a supply plant to a distributing plant which is a pool plant or another supply plant which is a pool plant shall be classified as claimed by the operators of both plants in their reports submitted pursuant to § 995.30: *Provided*, That the amount of transferred milk classified as Class I milk during the month shall not result in a higher proportion of the total producer milk at such supply plant being classified as Class I milk than the proportion classified as Class I milk at such distributing plant during the month.

(d) During each of the months of January through August, inclusive (beginning in 1958), a handler operating a distributing plant may assign Class I milk to a supply plant(s) which was a pool plant and which transferred milk to such distributing plant for at least three of the months of September through December, immediately preceding, even though such milk is not transferred physically to such distributing plant during the current month: *Provided*, That the pounds of Class I milk to be assigned to Class II milk in the distributing plant and the corresponding pounds of Class II milk to be assigned to Class I milk in any supply plant for the current month in the period January through August, inclusive, when added to any quantities actually transferred from such supply plant to such distributing plant during the current month and assigned to Class I milk pursuant to paragraph (c) of this section shall not exceed the lesser of the following amounts:

(1) The monthly average number of pounds assigned to such supply plant as Class I milk from such distributing plant during the preceding period September through December, inclusive;

(2) An amount computed as follows: Determine the percentage which the volume of Class I milk described under subparagraph (1) of this paragraph bears to the monthly average pounds of Class I milk at such distributing plant for the preceding period September through December, inclusive, and multiply the total

Class I milk at such distributing plant for the current month by such percentage; and

(3) The quantity of milk received from producers at such supply plant during the month;

(e) As Class I milk, if transferred or diverted to a nonpool plant in the form of milk, skim milk or cream in bulk, unless:

(1) The transferring or diverting handler claims classification as Class II milk in his report submitted pursuant to § 995.30 for the month;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available, if requested by the market administrator for the purpose of verification of such indicated utilization; and

(3) An equivalent amount of skim milk and butterfat was used in products in Class II milk at such nonpool plant; and

(f) As Class I milk if transferred to a producer-handler in the form of a fluid milk product.

§ 995.44 *Responsibility of handlers and reclassification of milk*. (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise;

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 995.45 *Computation of the skim milk and butterfat in each class*. For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk at each pool plant: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

§ 995.46 *Allocation of skim milk and butterfat classified*. After making the computations pursuant to § 995.45, the market administrator shall determine the classification of producer milk received at each pool plant during the month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk, the pounds of skim milk in producer milk shrinkage assigned to Class II milk pursuant to § 995.41 (b) (4);

(2) Subtract from the total pounds of skim milk in Class I milk, the pounds of skim milk in fluid milk products, received in consumer packages and disposed of in the same packages, as received, and which was classified and priced as Class I milk under another order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that subtracted pursuant to subparagraph (2) of this paragraph;

(4) Subtract from the remaining pounds of skim milk in each class, the skim milk in fluid milk products received from other pool plants according to the classification of such products as determined pursuant to § 995.43;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month; and

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II.

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 995.50 *Class I Milk prices*. Subject to the provisions of § 995.52, the minimum prices per hundredweight to be paid by each handler for producer milk of 3.5 percent butterfat content at his pool plant during the month which is classified as Class I milk, shall be determined by the market administrator as follows:

(a) Ascertain the Class I minimum price for milk of 3.5 percent butterfat content for the month as determined pursuant to the order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area (Order No. 75; Part 975 of this chapter); and

(b) Deduct the location adjustment rate on Class I milk which would be applicable pursuant to Part 975 of this chapter at a pool plant pursuant to such part at the location of the pool plant pursuant to this part.

§ 995.51 *Class II milk prices*. The minimum prices per hundredweight to be paid by each handler for skim milk and butterfat in producer milk at his pool plant(s) during the month which is classified as Class II milk shall be the arithmetic average (computed by the market administrator to the nearest tenth of a cent) of basic or field prices per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following locations for which prices have been reported to the market administrator or to the Department on or before the 6th day after the end of the month by the companies listed below:

Company and Location

Defiance Milk Products Co., Defiance, Ohio.
Pet Milk Co., Coldwater, Ohio.

Nestlé Milk Products Co. (uninspected milk price), Marysville, Ohio.

Fisher Dairy and Cheese Co., Wapakoneta, Ohio.

Chief Dairy Products Co., Upper Sandusky, Ohio.

§ 995.52 *Butterfat differentials to handlers.* If the weighted average butterfat test of producer milk which is classified, respectively, in any class of utilization, pursuant to § 995.46, is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of one percent that such weighted average butterfat test is above or below, respectively, 3.5 percent, a butterfat differential (computed to the nearest tenth of a cent), calculated for each class of utilization as follows:

(a) *Class I milk.* Multiply the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department by 0.130;

(b) *Class II milk.* Multiply the Chicago butter price described in paragraph (a) of this section by 0.115.

§ 995.53 *Use of equivalent prices.* If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

HANDLER'S OBLIGATION AND UNIFORM PRICE

§ 995.60 *Computation of net obligation for each handler.* The value of producer milk received during each month by each handler at each of his pool plants shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class by the applicable class prices and add together the resulting amounts;

(b) Add an amount computed by multiplying overage deducted from each class pursuant to § 995.46 (a) (6) and the corresponding step of (b) by the applicable class price;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 995.46 (a) (5) and the corresponding step of (b), whichever is less;

(d) In the case of distributing plants, add an amount computed by multiplying the hundredweight of Class I milk assigned to a supply plant(s) from such distributing plant pursuant to § 995.43 (d) by the difference between the Class I price at such distributing plant and the Class I price applicable at the respective supply plant;

(e) Adjust the resulting amount by the sum of money used in adjusting the

uniform price for the previous month to the nearest cent, pursuant to § 995.61 (c) or § 995.62 (d);

(f) Add or subtract, as the case may be, the amount necessary to correct errors in classification for previous delivery periods as disclosed by audit of the market administrator.

§ 995.61 *Computation of uniform prices.* For each of the months of July through March, the market administrator shall compute for each pool plant a "uniform price" per hundredweight, on the basis of 3.5 percent butterfat content, for producer milk received at such pool plant as follows:

(a) From the value of milk computed for such plant pursuant to § 995.60, deduct, if the weighted average butterfat test of all producer milk received at such plant is greater than 3.5 percent, or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the variance of such weighted average butterfat test from 3.5 percent by the butterfat differential computed pursuant to § 995.75 and multiply by 10;

(b) Divide the resulting value by the total hundredweight of producer milk received at such plant; and

(c) Adjust the resulting figure to the nearest cent.

§ 995.62 *Computation of prices for eligible and ineligible milk.* For each of the months of April, May and June, the market administrator shall compute for each pool plant a price for eligible milk and ineligible milk of 3.5 percent butterfat content as follows:

(a) Compute the value, subject to the conditions set forth in paragraph (b) of this section, of ineligible milk received at such pool plant by multiplying the hundredweight of such milk by the Class II price;

(b) Compute the value of eligible milk received at such pool plant by subtracting the value obtained pursuant to paragraph (a) of this section from the value of milk of 3.5 percent butterfat content at such plant computed pursuant to § 995.61 (a): *Provided*, That if such resulting value is greater than an amount computed by multiplying the hundredweight of such eligible milk by the Class I price, such value in excess thereof shall be added to the value of ineligible milk computed pursuant to paragraph (a) of this section to the extent that the ineligible milk price shall not exceed the base price. Any remaining value shall be prorated between the hundredweight of eligible and ineligible milk;

(c) Divide the value obtained pursuant to paragraph (a) of this section by the hundredweight of ineligible milk. This result less any fraction of a cent shall be the price per hundredweight for ineligible milk of 3.5 percent butterfat content at such pool plant; and

(d) To the value for eligible milk computed pursuant to paragraph (b) of this section, add the value represented by any fraction of a cent subtracted pursuant to paragraph (c) of this section and divide by the hundredweight of eligible milk received. This result less any frac-

tion of a cent per hundredweight shall be the price for eligible milk of 3.5 percent butterfat content at such pool plant.

§ 995.63 *Notification.* On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing for such month:

(a) The amount and value of his producer milk in each class;

(b) The uniform price(s) for such handler computed pursuant to §§ 995.61 and 995.62, and the butterfat differential computed pursuant to § 995.75; and

(c) The amounts to be paid by such handler pursuant to §§ 995.76 and 995.77.

DETERMINATION OF ELIGIBLE MILK QUOTA

§ 995.64 *Determination of eligible milk quota for each producer.* Subject to the rules set forth in § 995.65, the market administrator shall determine the daily quota for each producer by dividing the total pounds of milk delivered by such producer during the immediately preceding period of October through December by the number of days from the date of first delivery to the end of such three-month period, but not less than 30.

§ 995.65 *Quota rules.* (a) Except as provided in paragraph (b) of this section, an eligible milk quota shall be assigned to the person for whose account that milk was delivered during the quota-forming period;

(b) An entire quota may be transferred during the period of April through June by notifying the market administrator in writing before the first day of any month that such quota is to be transferred to the person named in such notice, but under the following conditions only:

(1) In the event of the death of a producer, the entire daily quota may be transferred to a member of such producer's immediate family who carries on the dairy operation on the same farm; and

(2) If a quota is held jointly and such joint holding is terminated on the basis of written notice to the market administrator from the joint holders, the entire daily quota may be transferred to one of the joint holders, or divided in accordance with such notice between the former joint holders if they continue dairy farm operations.

PAYMENTS

§ 995.70 *Time and method of final payment.* On or before the 18th day after the end of each month, each handler shall pay to each producer, or to a cooperative association with respect to producer milk which was caused to be delivered to his pool plant(s) by such association either directly or from producers who have authorized such association to collect payment for them, for producer milk received from such producer or so delivered by such cooperative association, respectively, during such month not less than the uniform price(s) at such pool plant, adjusted by the butterfat differential pursuant to § 995.75, less the amount of payment made pursuant to § 995.71.

§ 995.71 *Partial payments.* On or before the last day of each month each handler shall pay to each producer, or to a cooperative association authorized to collect payment, for the milk received at his pool plant(s) from such producer or caused to be delivered to such plant by such cooperative association during the first fifteen days of each month at a rate computed as follows:

(a) Deduct 75 cents from the uniform price for such plant for the preceding month;

(b) Add or subtract any amount by which the Class I price differential pursuant to Order No. 75 (Part 975 of this chapter) for the current month is greater than or less than, respectively, such differential for the preceding month; and

(c) Round off the result to the nearest multiple of 10 cents: *Provided*, That in the event the producer discontinues shipping milk to a pool plant of such handler during the month, such partial payment need not be made and full payment for all milk received from such producer during such month shall be made pursuant to the provisions of § 995.70.

§ 995.75 *Producer butterfat differential.* In making payments pursuant to § 995.70 the uniform price for each pool plant shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential computed by multiplying the pounds of butterfat in producer milk at such pool plant allocated to Class I and Class II milk pursuant to § 995.46 (b) by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat and rounding the resulting figure to the nearest tenth of a cent.

§ 995.76 *Expense of administration.* As his pro rata share of expense incurred pursuant to § 995.22 (d), each handler shall pay the market administrator, on or before the 18th day after the end of each month, 3 cents per hundredweight of milk, or such amount not to exceed 3 cents as the Secretary may from time to time prescribe, with respect to receipts during such month, of (a) producer milk (including any milk of such handler's own production); (b) other source milk at a pool plant allocated to Class I milk pursuant to § 995.46 (a) (3) and the corresponding step of § 995.46 (b); and (c) Class I milk disposed of in the marketing area by a distributing plant, not a pool plant.

§ 995.77 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 995.70, with respect to all producer milk (except milk of such handler's own production) at a pool plant, not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight of milk, or such amount not to exceed 6 cents as the Secretary may from time to time prescribe, and on or before the 18th day after the end of such month shall pay such deductions to the market adminis-

trator. Such moneys shall be expended by the market administrator to verify weights, samples, and tests of milk of such producers and to provide such producers with market information, such services to be performed by the market administrator, or by an agent engaged by and responsible to him.

(b) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unexpired membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make deductions in accordance with the association's claim and shall pay the amount deducted to the association within 18 days after the end of the month.

§ 995.78 *Errors in payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, or such handler from the market administrator, pursuant to § 995.76 or § 995.77 or (b) any producer or cooperative association from such handler pursuant to § 995.70 the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

APPLICATION OF PROVISIONS

§ 995.80 *Plants subject to other Federal orders.* The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant pursuant to § 995.9 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Ohio, marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided*, That the operator of a distributing plant or a supply plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

§ 995.81 *Milk caused to be delivered by cooperative associations.* Milk re-

ferred to as received from producers by a handler shall include milk of producers caused to be delivered directly from the farm to the fluid milk plant of such handler by a cooperative association which is authorized to collect payment for such milk.

§ 995.83 *Producer-handler.* Sections 995.50 through 995.53, 995.60 through 995.66 and 995.70 through 995.78 shall not apply to the milk of a producer-handler.

TERMINATION OF OBLIGATIONS

§ 995.90 *Termination of obligations.* (a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses with respect to any obligation under this part, to make available to the market administrator or his representatives all books, or records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set-off by the market administrator) was

made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 995.100 *Effective time.* The provisions of this part, or of any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 995.101 *When suspended or terminated.* Whenever the Secretary finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the act, he shall terminate or suspend the operation of this part, or any such provision of this part.

§ 995.102 *Continuing obligations.* If upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 995.103 *Liquidation.* Upon the suspension of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 995.110 *Agents.* The Secretary may by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 995.111 *Separability of provisions.* If any provision of this part, or its application to any person or circumstances, is held invalid the application of such provisions, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Filed at Washington, D. C., this 11th day of April 1957.

[SEAL]

ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 57-3035; Filed, Apr. 15, 1957; 8:51 a. m.]

No. 73—9

[7 CFR Part 1022]

[Docket No. AO-292]

SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Yakima, Washington, on January 14-16, 1957, after notice thereof published in the FEDERAL REGISTER (21 F. R. 10178), on a proposed marketing agreement and order regulating the handling of sweet cherries grown in designated counties in Washington, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

On the basis of the evidence introduced at the hearing, and the record thereof, the Acting Deputy Administrator, Marketing Services, Agricultural Marketing Service, on March 15, 1957, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (F. R. Doc. 57-2124; 22 F. R. 1854). No exception to said recommended decision was filed.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to be affected by the order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the order including:

(a) Definition of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions;

(b) The establishment, maintenance, composition, powers, duties, and operation of a committee which shall be the administrative agency for assisting the Secretary in administration of the program;

(c) The incurring of expenses and the levying of assessments;

(d) Authority to establish cherry marketing research and development projects;

(e) The method for regulating shipments of cherries grown in the production area;

(f) The provision of exemptions and the establishment of special regulations for cherries handled in certain types of shipments or for certain specified purposes;

(g) The requirement for inspection and certification of cherries handled;

(h) The establishment of reporting requirements for handlers;

(i) The requirement of compliance with all provisions of the order and with regulations issued pursuant thereto; and

(j) Additional terms and conditions as set forth in §§ 1022.62 through 1022.71 and published in FEDERAL REGISTER (21 F. R. 10178) on December 19, 1956, which are common to marketing agreements and orders, and certain other terms and conditions as set forth in §§ 1022.72 through 1022.74, and also published in the said issue of the FEDERAL REGISTER, which are common to marketing agreements only.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

(1) The major part of the crop of cherries produced in the designated counties of Washington comprising the "production area" is shipped in fresh market channels. The bulk of such production moves into the markets of the Midwestern and Northeastern States. Normally, two-thirds to three-fourths of such cherries moves through the terminal auction markets. Among the more important volume markets are New York, Chicago, Philadelphia, Boston, Minneapolis-St. Paul, Pittsburgh, and Detroit. Smaller volumes, but nonetheless important, are marketed on the West Coast. Canada is the most important export market for Washington cherries.

Ten States, other than Washington, produce cherries in commercially significant volume. These States are Oregon, California, Montana, Idaho, Colorado, Utah, Michigan, New York, Pennsylvania, and Ohio. From the standpoint of fresh market sales, however, Washington and California are most important. During the 5-year periods ending 1944, 1949, and 1954 Washington originated 38.8, 38.2, and 30.5 percent, respectively, and California 33.6, 34.7, and 36.6 percent, respectively, of total fresh shipments. Most of the California production is shipped before cherries begin moving from Washington. Movement from Oregon, Idaho, Utah, and Colorado takes place during the Washington shipping season. However, it was testified that normally Washington cherries constitute 75 to 80 percent of the total supply in the large Northeastern auction market cities during the period when such cherries are being shipped.

Any handling of Washington cherries in fresh market channels exerts an influence on all other handling of such cherries in fresh form. Sellers of such cherries, as of other commodities, endeavor to transact their business so as to secure the highest possible return for the quantities of cherries they have for sale. In effecting these transactions, the seller continually surveys all accessible markets in order to take advantage of the best opportunities to market the fruit. Markets within the State of

Washington provide opportunities to dispose of cherries in the same manner as markets within other States, or for export; and the sale of a quantity of Washington cherries in a market within the State of Washington exerts the same influence on all other sales of such cherries as a like quantity sold in a market within another State.

The principal intrastate markets for Washington cherries are located in the cities of Seattle, Tacoma, and Spokane outside the production area. These markets take approximately 4 to 7 percent of the cherries marketed fresh each season. If shipments of cherries to markets outside the State of Washington were regulated, while those within the State of Washington were unregulated, growers and handlers would attempt to market within the State all the lower quality cherries which could not be shipped under regulation. Because of such large quantity of low quality cherries sold in markets within the State, prices for cherries in such markets would be depressed below those prevailing in markets outside the State.

The existence of a lower price level for cherries marketed within the State of Washington would tend to depress the prices for cherries sold in interstate markets. Buyers generally have ready access to market information; and knowledge of lower prices in one market is used in bargaining for cherries to be shipped into other markets, including those outside the State of Washington. As a case in point, there are business concerns who control retail outlets in Seattle, and also in Minneapolis, Minnesota, and these concerns are well aware of the price situation in both markets. Furthermore, with large quantities of poor quality cherries available for sale in markets within the State of Washington, there would be little opportunity to sell in such markets cherries meeting the requirements of the regulations established. The larger quantity of cherries, which would be required to be sold in interstate markets under such circumstances, would also tend to lower the level of prices in the interstate markets.

Itinerant truckers move quantities of cherries mainly to intrastate markets. However, it is normal practice for such persons to sell cherries in the markets where prices are most favorable. It is more than probable that below-grade shipments destined for the Seattle-Tacoma area or to Spokane would be diverted to Portland, Oregon, or to other markets outside the State if prices were more favorable there than in markets within the State of Washington. In fact, it is a customary practice to ship fruit from the production area to Spokane and reship it from there to Idaho, Montana, or to Canada. Under these circumstances, it would be virtually impossible to effect compliance with regulations governing interstate shipments if shipments to markets within the State were unregulated.

Hence, it is concluded that the movement and sale of Washington cherries, whether to a market within the State of Washington or outside thereof, affect prices of all cherries grown in the pro-

duction area. Therefore, it is hereby found that all handling of such cherries grown in the production area are either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. However, the quantity of cherries handled for consumption within the production area is relatively inconsequential when compared with the total quantity handled; and because of the nearness to the source of supply, it would be administratively impracticable to regulate the handling of cherries for consumption within such area. With this one exception, and except as hereinafter otherwise provided, all handling of cherries grown in the production area should be subject to the authority of the act and of the order.

(2) The production of Washington cherries, though varying from year to year, ranged steadily upward during the 15-year period ending with the 1949 season. During the 5-year periods ending 1939, 1944, and 1949, average annual production was 15,560, 24,300, and 29,580 tons, respectively. In 1950 the trees were damaged by cold weather and the crop dropped to 16,500 tons, and for the 5-year period ending 1954, average annual production was 17,860 tons. By 1955 the orchards had recovered, and 23,500 tons were produced.

Reflecting the wartime demand for food, average equivalent packinghouse door prices per ton for Washington cherries for fresh market rose from \$111.00 per ton in 1941 to \$312.00 per ton in 1944. In 1945, 1946, 1947, and 1948, such prices were \$269.00, \$288.00, \$339.00, and \$258.00, respectively. In 1949 such price was \$142.00 per ton. With the reduction of the crop during the 5-year period ending in 1954, prices increased; and prices during such period averaged \$279.00 per ton. In 1955 with a near normal crop of 23,500 tons, equivalent packinghouse door returns to growers dropped to \$199.00 per ton. The equivalent parity price, packinghouse door, for the 1955 season for Washington cherries was \$292.00 per ton.

Prices for cherries generally are high at the beginning of the season, and producers and handlers are anxious to start shipping in order to take advantage of such prices. Under such circumstances, cherries in early shipments often have not been sufficiently mature to give consumers' satisfaction, and it is believed that consumers' dissatisfaction stemming from purchase and consumption of such cherries curtails demand for cherries throughout the remainder of the season. No State requirements have been established with respect to uniformity of grade, size, quality, or containers. Handlers who have made a conscientious effort to ship only good quality cherries in an effort to get a fair return often find that other handlers have shipped cherries of poor grades and smaller sizes and have so depressed the market that fair returns were impossible to obtain.

The harvesting and packing of cherries, as compared with most other tree fruit crops, are extremely expensive operations. It was testified at the hearing that the cost of picking and handling

cherries to the packing plant was \$80.00 to \$100.00 per ton. The cost of packing cherries in the 15-pound double-row-faced pack, which is the dominant pack shipped to the terminal auction markets, was stated as \$2.00 per container. (To pack cherries in this manner requires the placing, by hand, of two layers of cherries in symmetrical rows in the container while it is upside down, after which the remaining cherries are placed in at random, and the bottom nailed in place. When the container is opened the "face" is on top.) In addition to being a most expensive method of packing, this method creates a bottleneck in the packing plants, because it ties up the packing facilities, and slows down movement. Cherries must be moved rapidly after they are picked from the trees in order to have them reach the market while the stems are green and the fruit still has the attractive appearance necessary to create impulses to buy on the part of consumers. It was testified that the bottleneck created by the double row-faced pack had resulted in considerable deterioration of cherries stacked in field containers at the packing houses waiting to be packed for shipment. Such deteriorated cherries are generally considered unsuitable for packing in row-faced packs, and it has been a practice to ship such deteriorated cherries and other low quality cherries in loose packs. Such practice has established a poor reputation for loose packed cherries because buyers associate such packs with poor quality. This has been a severe handicap to the industry in its efforts to overcome cost problems which are aggravated by increased expense of packing materials, labor, transportation, and other marketing charges. Such costs are almost prohibitive to achievement of wide distribution of cherries. Industry efforts to shift to shipment of good quality cherries in the less expensive loose packs have been largely defeated due to lack of buyer acceptance stemming from the reputation for poor quality cherries in such packs. In order to promote the orderly marketing of cherries and to achieve the wide distribution needed to dispose of the crop at reasonable returns to growers, it is necessary to assure buyers of consistently uniform good quality cherries in all types of packs. The establishment of regulations such as are contemplated under the order would provide a method whereby such orderly marketing could be promoted, and, this would tend to effectuate the declared policy of the act.

Handlers, also have varied the dimensions of containers, presumably in order to gain a competitive advantage over others. Containers of a capacity of 12, 15, and 20 pounds have through usage become almost standard throughout the industry. However, there has developed a 10-pound container as a variation of the 12-pound, and an 18-pound as a variation of the 20-pound container. The use of containers which vary only slightly from each other creates unstable marketing conditions in that the difference in dimensions of such containers is such that a smaller container may be substituted for a larger one without customers being aware that it contains less

fruit. Restrictions on the size, capacity, dimensions, and pack of containers used in the marketing of Washington cherries would enable buyers and handlers alike to know the exact quantity of cherries covered by prices quoted and thereby tend to increase trade confidence and stability in the marketing of the fruit.

Prices of Washington cherries and total returns to the growers of such fruit could be augmented by restricting shipments in fresh market channels to cherries of desirable maturity, grade, size, and quality and limiting the containers used in making such shipments. When supplies of cherries are heavy, fruit of inferior grades and qualities, or of undesirable maturity or size, may be sold only at discounts, and, since competition in the marketing of cherries is based to a considerable extent on price, such discount sales tend to depress prices for all cherries being marketed. Restrictions on the shipment of such discounted fruit would, therefore, tend to increase prices for good quality cherries. Moreover, shipments of cherries which are of inferior grade or quality, or of undesirable size or maturity, often do not sell at prices covering even the cash costs of harvesting and marketing. Restrictions on the shipment of such fruit would not only improve the grade, size, and quality of cherries marketed and promote buyer confidence in Washington cherries, but would also improve the average returns to growers by preventing losses incurred through shipment of undesirable fruit. Moreover, the shipment of very poor quality cherries, including culls, immature fruit, extremely small sizes, and deteriorated fruit is rarely ever in the interest of consumers or producers. Cherries of such poor quality are not a value to the consumer because of poor flavor and excessive waste. Shipment of such cherries results in consumer dissatisfaction and destruction of the reputation of quality for Washington cherries. Even when the season average price is above the parity level it is not in the public interest to ship such poor quality cherries.

Therefore, it is concluded that the establishment of the order, providing for the regulation of maturity, grade, size, and quality of shipments of Washington cherries, and for the establishment of uniform containers to be used for such shipments, is necessary to effectuate the declared purposes of the act. Also, the establishment and maintenance in effect of minimum standards of quality and maturity, when prices are above the parity level, will effectuate such orderly marketing of Washington cherries as will be in the public interest. The objective under such order is the tailoring of the supply of cherries available for sale in fresh market channels to the demand in such outlet so that the fruit thus made available to buyers will be packaged uniformly and be of desirable maturity, grade, size, and quality. Such limitations on shipments of Washington cherries should contribute to the establishment of more orderly marketing conditions for such fruit and tend to increase the demand therefor.

(3) The term "cherries" should be defined in the order to identify the

commodity to be regulated thereunder. Such term, as used in the order, refers to all varieties of cherries, as hereinafter defined, classified botanically as *Prunus avium*. Cherries are readily distinguished from other fruits, and the term has a specific meaning to all producers and handlers of the commodity in the production area and to those who purchase and distribute in the receiving markets cherries grown in the production area.

The term "varieties" should be defined in the order, as hereinafter set forth, since it is proposed to provide authority in the order for issuance of separate regulations for different varieties. The principal varieties of cherries grown in the production area are Bing and Lambert. Each variety of cherries is a classification or subdivision of *Prunus avium* and possesses definitive characteristics which serve to distinguish it. Recognition of different varieties of cherries is common throughout the production area and the distributing trade, and there is little likelihood that one variety would be confused with another.

A definition of the term "production area" should be incorporated into the order as a means of delineating the area within which cherries must be grown for the handling thereof to be subject to regulation. Such term should embrace all of the territory within the boundaries of the Counties of Okanogan, Chelan, Douglas, Grant, Yakima, and Benton within the State of Washington. Such area includes the Wenatchee and Yakima valleys within which practically all of the commercial crop of Washington cherries is produced. The cherries produced for market within this area are of the same varieties and are marketed at approximately the same time and compete with each other in the markets. All the cherries shipped to market from the production area are prepared for market in packing facilities located within such area. There are no cherries produced outside the production area and brought into such area for preparation for market. To exclude any portion of the production area as defined would tend to defeat the purposes of the order, in that cherries from any such excluded portion which do not meet regulations applicable to regulated fruit could then be marketed free from regulations and thereby depress the prices of the regulated cherries grown in the remainder of such area. Moreover, cherries produced in such excluded portion would probably have to be brought into the regulated area for preparation for market and this would lead to confusion and difficulty in enforcing regulations. Hence, it is concluded that the production area as hereinafter defined is the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act.

(4) The term "handler" should be defined as being synonymous with "shipper" and to identify the persons who handle cherries in the manner described and set forth in the definition of "handle," because such persons are to be subject to the order and regulations authorized thereunder. A handler should include any individual, partnership,

corporation, association, or any other business unit which handles cherries. Such persons are responsible, among other things, for the grade, size, quality, and maturity of the cherries they place, or cause to be placed, in the current of commerce between the production area and any point outside thereof whether by delivery to transportation agencies or to the consignees or purchasers of the fruit, or which are transported to market or sold; and such persons should therefore be considered as handlers. However, common or contract carriers of cherries they do not own should not be considered as handlers, even though they transport cherries, for the reason that these agencies transport cherries for a monetary consideration and do not have a proprietary interest in the commodity or any control over the grade, size, quality, or maturity thereof.

The definition of the term "handler" should apply to any person, including a producer, when such person performs any handling activities within the scope of the term "handle." It should include not only the first handler, but each succeeding handler who performs any such handling activities, so as to assure that all such handling of cherries will be in accordance with the order and regulations thereunder. With respect to handlers who conduct their businesses other than as individuals (e. g., firms that have sales managers or packinghouse managers), any handling activities engaged in by employees or officers of such handlers should be construed as handling caused by the principal company, as "handler." Hence, the term "handler" would cover the owner of a firm even though such person does not personally negotiate the sale or transport the cherries.

Such term should also include, in addition to the owner and officers, any other individual of a firm handling cherries who, in a supervisory capacity, is directly responsible for, and consequently causes, the sale or transportation of the commodity. Therefore, a handler would mean any person (except a common or contract carrier of cherries owned by another person) who handles cherries or causes cherries to be handled. In other words, the term "handler" should include not only persons who themselves sell or transport cherries, but also those persons who, although they do not themselves sell or transport cherries, nevertheless cause their sale or transportation. All persons coming within the meaning of such term should be responsible for complying with the obligations imposed by or pursuant to the order so as to assure that all cherries will be properly handled.

The term "handle" should be defined to identify those activities which it is necessary to regulate in order to effectuate the declared policy of the act. Such activities include all phases of selling and transporting which place or continue cherries in commerce from any point in the production area to any point outside thereof. Handling of cherries under the order would begin after the cherries have been removed from the tree and include each of the successive selling or transporting activities. The perform-

ance of any one or more of these activities, such as selling, consigning, delivering, or transporting, by any person either directly or through others, should constitute handling. In order to effectuate the declared policy of the act, each such person should be required to limit such handling of cherries to fruit which conforms to the applicable regulations established under the order.

It is common practice for growers to deliver their cherries to persons having facilities for packing and otherwise preparing the fruit for market. The grower, in such instance, properly relies on the person preparing the cherries for market to see that the fruit which is thereafter shipped meets all applicable requirements for marketing. Movement within the production area from the orchard to the place within the production area where the cherries will be prepared for market and activity in connection with such preparation should not be covered as handling subject to regulation. These actions, whenever they are performed, are, of necessity, preliminary to the handling, i. e., selling, consigning, delivering, and transporting of cherries. It would unnecessarily complicate the administration of the program to require persons engaged in the preparation of cherries for market to meet the requirements of regulations prior to such preparation. Therefore, such activities should not be included within the definition of handle.

Some cherries are sold at the orchard and at packinghouses to persons—itinerant truckers and others—who transport the cherries from such points to markets outside the production area. The selling or delivery of cherries to such persons, and the subsequent movement to points outside the production area, whether within or outside the State, are handling transactions. Any person who engages in any such transaction, whether a grower, packinghouse operator, trucker, or otherwise, should therefore be considered as a handler under the order by virtue of such transaction and subject to any rules and regulations pursuant thereto. Each such person should have the responsibility for assuring himself that the cherries he so handles meet all applicable regulations in effect at the time of handling and that the cherries have been inspected and certified as required under the order. Compliance with regulations which are authorized by the order can readily be determined by the person who is grading or preparing the cherries for market. The primary responsibility for determining that cherries in any shipment conform to applicable regulations should rest with the person who places, or causes to be placed, the cherries in the current of commerce between the production area and any point outside thereof. In most cases, such person will be the one who graded, or at least was responsible for grading or preparing such cherries for market. Of course, all subsequent handlers also should have the responsibility for seeing that any maturity, grade, size, quality, and any other regulations pertaining to such cherries are met at the time such per-

sons handle the cherries. A very small quantity of cherries is handled for consumption within the production area. Such handling directly burdens, obstructs, or affects interstate commerce, as hereinbefore noted. However, the quantity is so small, and the difficulty of enforcing regulations for cherries so marketed would be so great, that such handling of cherries should not be regulated. As all handling of cherries, except as indicated herein and except for the handling of cherries specifically exempted from regulation under the act or the order, directly burdens, obstructs, or affects interstate commerce, it is concluded that the handling of all such cherries, with the exceptions hereinbefore noted, should be subject to the order and any regulations issued pursuant thereto.

(5) (a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the order. These terms should be defined for the purpose of designating specifically their applicability and establishing appropriate limitations on their respective meanings wherever they are used.

The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, in order to recognize the fact that it is physically impossible for him to perform personally all functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

The definition of "act" provides the correct legal citations for the statute pursuant to which the proposed regulatory program is to be operative and avoids the need for referring to these citations.

The definition of "person" follows the definition of that term as set forth in the act, and will insure that it will have the same meaning as it has in the act.

The term "fiscal period" should be defined to set forth the period with respect to which financial records of the Washington Cherry Marketing Committee—the agency which will administer the program locally—are to be maintained. At the present time it is desirable to establish a 12-month period ending March 31 as a fiscal period. Such a period would fix the end of one fiscal period and the beginning of the next at a time of inactivity in the marketing of cherries. This would facilitate fixing the term of office of members and alternates to coincide with such period as it would allow sufficient time prior to the time shipments begin for the committee to organize and develop information necessary to its functioning during the ensuing year, and would still insure that a minimum of expense would be incurred during a fiscal period prior to the time assessment income is available to defray such expenses. However, it was testified that for reasons not now apparent it may be desirable at some future time to establish a fiscal period other than one

ending March 31, and that authority should be included in the order to provide for such establishment subject to approval of the Secretary pursuant to recommendations of the committee. Therefore, it is concluded that such term should be defined as hereinafter set forth to provide this flexibility.

A definition of "committee" should be incorporated in the order to identify the administrative agency established under the provisions of the program. Such committee is authorized by the act, and the definition thereof, as hereinafter set forth, is merely to avoid the necessity of repeating its full name each time it is referred to.

Definitions of "grade" and "size" should be incorporated in the order to provide a basis for expressing grade and size limitations thereunder, and thus to enable persons affected thereby to ascertain the extent and application of grade and size limitations. "Grade" should be defined as any one or more of the established grades of cherries as defined and set forth in (1) "United States Standards for Sweet Cherries," issued by the United States Department of Agriculture, effective May 14, 1956, which standards were published in the FEDERAL REGISTER (21 F. R. 2371), or (2) Standards for cherries issued by the State of Washington, or (3) amendments to any grades set forth in either of such standards, or modifications thereof, or variations based thereon. Such definition would provide the flexibility necessary to cope with the possible variations in cherries due to detrimental effects of weather or other possible hazards affecting the crop. The State of Washington has not as yet issued standards for cherries. The United States Standards for cherries have been recently revised, however, and should provide appropriate bases for describing grade limitations. The cherry industry is contemplating a request to the State of Washington to develop and issue standards for cherries.

Sizes of cherries are commonly referred to in the production area by row count, i. e., the number of cherries of a uniform size necessary to pack row-faced across a 10½-inch inside width container. Hence, the diameter of the cherries determines the number of rows that may be packed in such container. Cherry sizers, consisting of plastic or metal cards with holes marked to denote the different row sizes, are commonly used to ascertain the size of cherries, the diameter of a specific hole in the card being equivalent to the space occupied in a row in the container by a cherry of that particular row size. Since cherries are shipped other than row-faced in containers, and diameter is the main factor determining size, it is concluded that the term "size" should be defined in terms of diameter or such other specifications as may be recommended by the committee and approved by the Secretary.

The term "pack" is commonly used throughout the cherry trade and refers to a combination of factors relating to the grade, size, quality, and quantity of cherries in a particular type and size of container and to the arrangement of the

cherries within that container. For example, "U. S. No. 1, 12-row, 15-pound double-faced pack" is considered by the cherry trade as a specific pack. "U. S. No. 1" describes the grade, "12-row," the size, and "15-pound double-faced," the container, quantity of cherries, and the arrangement of the cherries within the container. Under certain circumstances, it may be desirable to regulate shipments of cherries on the basis of particular grades or sizes, or both, that may be shipped in a specific container or containers and to specify the arrangement of the fruit within the container. Hence, it is concluded that "pack" should be defined as follows: "Pack" means the specific arrangement, size, weight, count, or grade of a quantity of cherries in a particular type and size of container.

The term "grower" should be synonymous with "producer" and should be defined to include any person who is engaged, within the production area, in the production of cherries for market and who has a proprietary interest therein. A definition of the term grower is necessary for such determinations as eligibility to vote for, and to serve as, a grower or alternate grower member on the Washington Cherry Marketing Committee and for other reasons. Each business unit (such as a corporation, partnership, or community property arrangement) engaged in the production of cherries for market should, when voting for nominees for membership on the committee, be entitled to only one vote. The term "grower" should, therefore, be defined as hereinafter set forth.

"District" should be defined as set forth in the order to provide a basis for the nomination and selection of committee members. The districts (i. e., the geographical divisions of the production area as established and as set forth in the order) represent the best basis which could be devised at this time for providing a fair, adequate, and equitable representation on the committee. The provision for redistricting is desirable because it allows the committee and the Secretary to consider, from time to time, whether the basis for representation on the committee should be improved.

"Export" should be defined in the order as any shipment of cherries beyond the boundaries of the continental United States. Shipments of cherries to points outside of the continental United States may be of different grades, sizes, or qualities than those shipped to domestic markets. This results from different market demands as between domestic and other markets. Therefore, the order should provide authority permitting different or special regulations, or even no regulations, when warranted, with respect to such shipments out of the United States.

The term "container" should be defined in the order to mean a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging, or handling of cherries. The definition of the term is needed to serve as a basis for differentiation among the various shipping receptacles, in which cherries are sold or move to market, for which different regulations could be applicable.

(b) It is desirable to establish an agency to administer the order locally under and pursuant to the act, as an aid to the Secretary in carrying out the declared policy of the act. The term "Washington Cherry Marketing Committee" is a proper identification of the agency and reflects the character thereof. It should be composed of 15 members, of whom 10 should represent growers and 5 should represent handlers. Alternate members should be provided to act in the place and stead of the members. Such a committee would be large enough to provide representation to all segments of the industry. The foregoing division of the members between growers and handlers would provide suitable grower representation and handler experience and information. A majority of the committee should consist of producers because the program is designed to benefit producers. The provision for handler members tends to give balance to the committee by providing the handler experience and marketing information necessary to the development of economically sound regulation of cherry shipments. Each handler member should be either a handler, an officer, or an employee of a handler, as handlers often are corporations and would be precluded from having representation on the committee unless officers and employees of handlers were authorized to serve as members of the committee. There are also growers in the production area which are corporations and their officers and employees should be similarly eligible for membership on the committee. Two handler members and four grower members should represent District 1. Three handler members and six grower members should represent District 2. Such representation recognizes to the extent practicable the relationship of the volume of production in the two districts. Provision to reapportion membership on the committee among districts should be provided so that, if it becomes apparent that through shifts in production, reestablishment of districts, or other reasons such representation is inappropriate, the Secretary may, upon recommendation of the committee, make such reapportionment as he finds necessary.

Each grower member of the committee and his alternate should be a producer, or an officer or employee of a corporate grower, of cherries in the district for which selected. Each handler member and his alternate should be a handler, or an officer or employee of a handler in the district for which selected. Persons with such qualifications should be intimately acquainted with the problems of producing or marketing cherries grown in such district and may be expected to present accurately the problems incident to the production or handling of cherries grown in that district.

The term of office of committee members and alternates under the proposed program should be for two years beginning on the first day of April and ending on March 31. This will establish an orderly procedure for changing the membership of the committee. The term of office should be for two years so

that members and alternates will have adequate time to familiarize themselves with the operation of the program and thus be in a position to render the most effective service assisting the Secretary to carry out the declared policy of the act. The beginning of each term of office will occur during a period prior to the commencement of a marketing season and hence allow adequate time for the committee to organize and start operating.

Provision should be made in the order for staggered terms of office of committee members and alternates. Under this provision seven members of the committee in office on March 31 would be replaced one year and eight members the next year. The establishment of such staggered terms should provide for more efficient administration of the program, in that members and alternates constituting new committee membership should benefit from the guidance of experienced members who carry over. The experienced members will help insure continuity of the policies and procedures relating to the administration of the proposed order; and such continuity should contribute materially to the successful administration of the marketing program. To provide a basis for starting staggered terms of office, the terms of one-half of the initial grower members and alternates in each district and of one handler member and his alternate in each district should be from the time of appointment through the following March 31 and of the other eight committee members and alternates from the time of appointment through the second following March 31. Successor members and alternates should be appointed for 2-year terms as herein provided. Committee members and alternates should serve during the term of office for which selected, and until their successors are selected and have qualified to insure continuity of committee operations.

A procedure for the election by growers and handlers of nominees for membership on the committee should be prescribed in the order to assist the Secretary in his selection of members and alternate members of the committee. It is recognized that the Secretary is vested with authority under the act to select the committee members; and the nomination of prospective members and alternate members at meetings of growers and handlers in the respective districts is a practical method of providing the Secretary with the names of the persons which the industry desires to serve on the committee.

Nomination meetings for the purpose of electing nominees for members of the committee and their alternates should be held or caused to be held by the committee on or before March 1 of each year. Insofar as possible, the committee should schedule such nomination meetings at such times and places as will result in maximum grower and handler participation. By having such nomination meetings not later than March 1 each year, the committee will be in a position to prepare and submit nomination lists to the Secretary in time for the Secretary

to select the members and alternate members of the new committee prior to the expiration of the terms of office of the existing committee members. The notice of hearing proposed that nomination meetings be held not later than March 15 of each year. However, it was testified that such nomination meetings should be held in sufficient time to assure that the names of nominees would be before the Secretary in time for him to make his selection of members and alternates prior to the beginning of the new term of office, beginning on April 1. Inasmuch as March 15 would allow approximately only 2 weeks for the committee to prepare and submit nomination lists and for the Secretary to review such nominations and make his selection, it is concluded that such nomination meetings should be held not later than March 1.

As the administrative committee will not be in a position to act until after the selection by the Secretary of its initial members, the order should provide a procedure for the selection of the initial members. The Secretary may appropriately select the initial grower and handler committee members and alternates from nominations which may be made by growers and handlers, respectively, or appropriate groups thereof, or from other eligible persons; and the order should so provide. In order that the initial membership of the committee may be selected as soon as possible after the approval of the program, it should be required that such nominations be submitted not later than the effective date thereof.

The order should provide that only growers who are present at the nomination meetings, or corporate growers who are represented at such meetings by duly authorized officers or employees, may participate in designating nominees for grower members and alternates; and only handlers present at nomination meetings or handlers represented at such meetings by duly authorized officers or employees may participate in the nomination of handler members and alternates. These restrictions are necessary in order to insure that the interests of each group are properly safeguarded and that the nominee truly reflects the views of the group which he is selected to represent.

Each grower and handler should have a similar and equitable voice in the election of nominees. Hence, if a person is qualified to vote either as a grower or a handler, he may select the group with which he wishes to participate. Such a person may not vote both as a grower and as a handler because this would enable him to participate in nominations to a greater degree than persons who are growers only or handlers only. Also, each grower and handler should be limited to one vote on behalf of himself, his partners, agents, subsidiaries, affiliates, and representatives, in designating nominees for committee members and alternates regardless of the size of any such person's operation or the number of districts in which he produces or handles cherries. If a grower or handler could cast more than one vote by

reason of operating in more than one district, such grower or handler would have an advantage in selecting nominees over growers or handlers operating in only one district. Also, if more than one vote was permitted, there is a possibility that large growers or handlers could dominate the elections by means of their partners, agents, subsidiaries, affiliates, and representatives, and nominate growers and handlers not favored by a majority of growers or of handlers. An eligible grower's or handler's privilege of casting only one vote should be construed to mean that one vote may be cast for each applicable position to be filled.

A grower who produces cherries in both districts should be permitted to select the district in which he will vote. He will thus be able to vote for nominees where he believes his best interest lies. Similarly, a handler, who handles cherries both in District 1 and District 2 of the production area, should be permitted to select either one of such districts in which to vote for nominees.

In order that there will be an administrative agency in existence at all times to administer the order, the Secretary should be authorized to select committee members and alternates without regard to nomination if, for any reason, nominations are not submitted to him in conformance with the procedure prescribed herein. Such selection should, of course, be on the basis of the representation provided in the order so that the composition of the committee will at all times continue as prescribed in the order.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary a written acceptance of his willingness and intention to serve in such capacity. This requirement is necessary so that the Secretary will know whether or not the position has been filled. Such acceptance should be filed promptly after the notification of appointment so that the composition of the committee will not be delayed unduly.

Provision should be made as set forth in the order for the filling of any vacancies on the committee, including selection by the Secretary without regard to nominations where such nominations are not made as prescribed, in order to provide for maintaining a full membership on the committee.

The committee should be given those specific powers which are set forth in section 8c (7) (C) of the act. Such powers are necessary to enable an administrative agency of this character to function.

The committee's duties, as set forth in the order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by the members of the committee will be confined to those which reasonably are necessary for the committee to carry out its responsibilities as prescribed in the program. It should be recognized that these specified duties are not necessarily all inclusive, in that it may develop that

there are other duties which the committee may need to perform.

With respect to the provision set forth in § 1022.31 (m) providing for redistricting and reapportionment of membership on the committee, such provision is necessary to enable the committee and the Secretary to consider from time to time whether the basis for representation has changed or could be improved and how such improvement should be made. The division of the production area into the two districts set forth in the order is a logical one at the present time from the standpoint of production, and this is the division commonly made by growers, handlers, and State agencies. However, shifts or other changes which may take place in the future due to increased or decreased production cannot be foreseen. Additional land suitable for cherry production is being made available within the production area through irrigation. Decreased acreage may result from damage caused by weather hazards. Therefore it is desirable to provide flexibility of operation so that if it should be in the best interests of the administration of the order to change the boundaries of districts, change the number of districts, or reapportion the representation on the committee among districts, the committee may so recommend; and the Secretary may take such action.

At least 12 members of the committee, or alternates acting for members, should be present at any meeting in order for the committee to make any decisions; and all decisions of the committee should require a minimum of 9 concurring votes. These provisions will assure that the actions of the committee will be considered by a good representation of its membership and approved by a majority of the committee. The order should provide that in the event neither member nor his alternate is unable to attend a meeting, such member or the committee may designate any other alternate member from the same district and group who is not acting as a member to serve in such member's place and stead.

In addition to meetings held where the committee is assembled in one place, the committee should be authorized to hold simultaneous meetings of its members assembled at two or more designated places wherein provision has been made for communication between all such groups and loudspeaker receivers made available so that each member may participate in the discussion and other actions the same as if the committee were assembled in one place. This should encourage attendance at meetings and may possibly facilitate some savings in expense through reduced travel time and distance. Such meeting should be considered as an assembled meeting. The committee should be authorized to vote by telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unreasonable to call an assembled meeting or when rapid action is necessary because of an emergency. Any votes cast in this fashion should be confirmed promptly in writing to provide a written record of the votes so cast. In case of an assembled meeting, however, all votes should be cast in person.

It is appropriate that the members and alternates of the committee may receive compensation for the time spent in attending committee meetings. The order authorizes a maximum of \$10.00 per day for this purpose, since the time so spent is usually at financial sacrifice to their personal businesses. While the payment of an amount not to exceed \$10.00 per day will not in most cases fully compensate for the time such members and alternates spend away from their personal businesses, there are producers and handlers in the production area who are willing to represent the industry by serving on the committee regardless of the personal sacrifice involved. The order also should provide for reimbursement of actual out-of-pocket reasonable expenses incurred on committee business, since it would be unfair to request the members and alternates to pay for such expenses incurred in the interest of all cherry growers and handlers in the production area.

In order for an alternate to adequately represent his district at any committee meeting in place of an absent member, it may be desirable that he should have attended previous meetings along with the member, so as to have a full understanding of all background discussions leading up to action that may be taken at the meeting. Also, an alternate may, in future years, be selected as a member on the committee; and to this extent, attendance at meetings by alternate members could be helpful. Although only committee members, and alternates acting as members, have authority to vote on actions taken by the committee, it is often important for the committee to obtain as wide a representation as practical of producer and handler attitudes toward a proposed regulation or other matter. Therefore, the order should provide that the committee, at its discretion may request the attendance of alternate members at any or all meetings, notwithstanding the expected or actual presence of the respective members, when a situation so warrants. The same compensation and reimbursement that are available to members should be made available also to alternate members when they are so requested and attend such meetings as alternates.

Provision should be made in the order whereby each committee will prepare an annual report prior to the end of each fiscal period. Such reports would provide committee members, the industry, and the Secretary with a record of the annual operations of the program and would provide a means for evaluation of the program and the need for any changes therein.

(c) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning and for such other purposes as the Secretary may, pursuant to the provisions of the order, determine to be appropriate. The funds to cover the expenses of the committee should be obtained through the levying of assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of such expenses by an administrative agency,

such as the Washington Cherry Marketing Committee, and requires that each marketing program of this nature contain provisions requiring handlers to pay pro rata the necessary expenses. Moreover, in order to assure the continuance of the committee, the payment of assessments should be required even if particular provisions of the order are suspended or become inoperative.

Each handler should pay to the committee upon demand with respect to all cherries handled by him as the first handler thereof his pro rata share of such expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal period. Each handler's share of such expenses should be equal to the ratio between the total quantity of cherries handled by him as the first handler thereof during the applicable fiscal period and the total quantity of cherries so handled by all handlers during the same fiscal period. In this way, payments by handlers of assessments would be proportionate to the respective quantities of cherries handled by each handler and assessments would be levied on the same cherries only once.

In order to provide funds for the administration of this program prior to the time assessment income becomes available during the fiscal period, the committee should be authorized to accept advance payments of assessments from handlers and also, when such action is deemed to be desirable, to borrow money for such purpose. The provision for the acceptance by the administrative agency of advance assessment payments is included in other marketing agreements and orders, and has been found to be a satisfactory and desirable method of providing funds to cover costs of operation prior to the time when assessment collections are being made in an appreciable amount. There was no objection offered at the hearing to indicate that any person was opposed to the proposal for the committee to borrow a limited sum of money each fiscal period. During years of normal growing conditions, revenue available to the committee from assessments would provide the means for the repayment of any such loan. In addition, as hereinafter set forth, provision should be made for increasing the rate of assessment in the event it should develop that due to some unforeseen circumstances the assessment income under the then prevailing rate is not sufficient to cover the expenses incurred.

The committee should be required to prepare a budget at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of income and expenditures necessary for the administration of the proposed order for such period. Each such budget should be presented to the Secretary with an analysis of its components and explanation thereof in the form of a report on such budget. It is desirable that the committee should recommend a rate of assessment to the Secretary which should be designed to bring in during each fiscal period sufficient income to cover authorized expenses incurred by the committee.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, or other available information, so as to assure the imposition of such assessments as are consistent with the act. Such rate should be fixed on a fair and equitable unit basis, such as a container, ton, or other quantity measurement.

The Secretary should have the authority, at any time during a fiscal period, or thereafter, to increase the rate of assessment when necessary to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee applicable to such period. Since the act requires that administrative expenses shall be paid by all handlers pro rata, it is necessary that any increased rate apply retroactively against all cherries handled during the particular fiscal period.

Handlers should be entitled to a proportionate refund of any excess assessments which remain at the end of a fiscal period. Such refund should be credited to each such handler against the operations of the following fiscal period so as to provide the committee with operating funds prior to the start of the ensuing shipping season; but, if a handler should demand payment of any such credit, the proportionate refund should be paid to him. However, good business practice requires that any such refund may be applied by the committee first to any outstanding obligations due the committee from any person who has paid in excess of his pro rata share of expenses.

The notice of hearing set forth a proposal to authorize the Secretary, upon recommendation of the committee, to establish a reserve fund from excess assessments remaining at the end of a fiscal period. Such fund would be carried over into following periods and used upon termination of the order to liquidate the affairs of the committee. However, it was testified at the hearing that in view of the weather hazards to which production of cherries is subject, as well as the fact that a large proportion of the committee's expenses in any fiscal period will be incurred prior to the time assessment income is available to cover such expense, that the authority for establishment and use of such a reserve fund should be broadened to cover expenses during deficit collection periods such as the pre-season shipping period and during periods of crop failure or near crop failure.

In most years shipment of cherries begins about the middle of June and is completed by the middle of August. The fiscal period starts on April 1, and, therefore, the committee must operate during April, May, and the first half of June with no current assessment income. The period just prior to the shipping season will be the period of greatest activity as the committee will be surveying the crop and marketing situation, holding meetings to develop a marketing policy and to develop recommendations for regulations. This means that in all probability one-third to one-half the committee's expenses will ordinarily be incurred before any current fiscal period income is collected.

An operating reserve is an important instrument for the continued effective operation of the order over a period of years. The production area is very susceptible to rain and hail storms just prior to and during the harvesting period, and to frost damage at the time of bloom and fruit set. Rain at harvest time causes cracking of the cherries and often reduces materially the volume of cherries suitable for shipment. Severe freezes during the winter often damage trees and reduce the crop in succeeding years. The assessment rates under the program are set at the beginning of the season for a crop of an estimated volume of shipments. Should crop failure or partial crop failure reduce the crop so that assessment income falls below expenses, it would be necessary for handlers in light of the reduced crop to cover the deficit. When consignee handlers have already made returns to growers, it would be very difficult for them to obtain from such growers the additional funds required to meet the increase in assessment that would be necessary. It also would constitute an extra burden on the industry to increase the assessment rate after disasters such as these have occurred.

Because of the hazards incident to the production of cherries, and the difficulties thus expected to be encountered in financing operations of the program during some years, it would be desirable to establish an operating reserve for use during any such year. Evidence presented at the hearing was to the effect that nearly all of the production of cherries is marketed year after year by the same handlers and that it would be equitable to all handlers, and far less burdensome to them, to contribute to the establishment of such an operating reserve during years of normal production rather than to be required to pay a high rate of assessment occasioned by a deficit during a year when the crop is materially reduced. The proposed reserve fund should be built up to the desirable amount as rapidly as possible, since a material reduction of the crop could occur at any time. Discretion should be used, however, so as not to impose excessively high assessments. It was indicated that it would be appropriate, and in keeping with the desires of the industry, to include in the annual budget a specific amount for the reserve fund as well as to use any other excess assessment funds available at the end of a fiscal period for this purpose. In order that such reserve funds not be accumulated beyond a reasonable amount, it was proposed that a limit of approximately one fiscal period's expense be provided. It was shown that such an amount should be sufficient to cover any foreseeable need, since some income from assessment may be expected during any year. After the reserve has been built up to that amount, excess assessment income should thereafter be returned to the handlers entitled to refunds in accordance with the provisions of the order. However, in keeping with the need for the reserve fund, whenever any portion of it is used, the full amount withdrawn should be returned to the reserve as

soon as assessment income is available for this purpose.

The reserve fund should be used, with the approval of the Secretary, to cover costs of liquidation of the program in the event the order is terminated, as well as to cover necessary operational costs, such as for salaries and other necessary expenses, during any period when the order, or any of its provisions, should be suspended. It is possible, of course, that the program may be terminated at the end of a fiscal period, or during a year when the production of cherries is relatively light. In such circumstances, it would be burdensome to handlers to require payment of an assessment to cover the liquidation costs. All handlers receive benefits from the program's operation; and even if a handler ceases handling cherries before the full time of its operation has expired, it would be appropriate and equitable for such handler to share in the expense of liquidation. Should the order provisions be suspended, it is likely such suspension would occur during a period when cherry production has been seriously curtailed. It would seem reasonable and proper, therefore, to use the reserve funds to defray expense of liquidation or any necessary cost of operation during a period of suspension. It is anticipated, of course, that the committee will endeavor to minimize costs in this regard as far as reasonably practicable consistent with the efficient performance of its responsibilities.

Upon termination of the order, any funds in the reserve which are not used to defray the necessary expenses of liquidation should, to the extent practicable, be returned to the handlers from whom such funds were collected. It is apparent, from the evidence of record, that it may not be possible to make an exact distribution of any such funds. Should the order be terminated after many years of operation, and there have been several withdrawals and redeposits in the reserve, the precise equities of handlers may be difficult to ascertain and any requirement that there be a precise accounting of the remaining funds could involve such costs as to nearly equal the monies to be distributed. Therefore, it would be desirable and necessary to permit the unexpended reserve funds to be disposed of in any manner that the Secretary may determine to be appropriate in such circumstances. In view of the foregoing, it is, therefore, concluded that authority should be provided, as hereinafter set forth, to permit the establishment and use of a reserve fund in the manner heretofore described.

Funds received by the committee pursuant to the levying of assessments should be used solely for the purposes of the order. The committee should be required, as a matter of good business practice, to maintain books and records clearly reflecting the true, up-to-date operation of its affairs so that its administration could be subject to inspection at any time by the Secretary. The committee should provide the Secretary with periodic reports at appropriate times, such as at the end of each marketing season or at such other times as

may be necessary, to enable him to maintain appropriate supervision and control over the committee's activities and operations. Each member and each alternate, as well as employees, agents, or other persons working for or on behalf of the committee, should be required to account for all receipts and disbursements, funds, property, and records for which they are responsible, should the Secretary at any time ask for such an accounting. Also, whenever any person ceases to be a member or alternate of the committee, he should similarly be required to account for all funds, property, and other committee assets for which he is responsible and to deliver such funds, property, and other assets to such successor as the Secretary may designate. Such person should also be required to execute assignments and such other instruments which may be appropriate to vest in the successor the right to all such funds and property and all claims vested in such person. This is a matter of good business practice.

(d) The order should provide, as hereinafter set forth, authority for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of cherries.

Through the medium of research investigation, the committee should be able to assemble and evaluate data on growing, harvesting, shipping, marketing, and other factors with respect to cherries which would be of value in determining what regulations should be established, in accordance with the act and the order, for the benefit of the cherry industry in the production area. As the committee becomes more aware of the value and need for marketing research and development, other projects will undoubtedly be initiated, the need for which may not have been foreseen during the course of the hearing.

The committee should be empowered to engage in such projects (except advertising and sales and trade promotion projects which are not permitted by the act), to spend assessment funds for them, and to consult and cooperate with appropriate agencies with regard to their establishment. The committee may be limited by the lack of facilities and trained technicians in carrying out any such projects; and it should be authorized to enter into contracts for their development with qualified agencies such as State universities, and public and private agencies. Prior to engaging in any such activities, the committee should, of course, submit to the Secretary for his approval the plans for each project. Such plans should set forth the details, including the cost and the objectives to be accomplished, so as to insure, among other things, that the projects are within the purview of the act. The cost of any such project should be included in the budget for approval, and such cost should be defrayed by the use of assessment funds as authorized by the act.

(e) The declared policy of the act is to establish and maintain such orderly marketing conditions for cherries, among other commodities, as will tend to establish parity prices therefor, and to establish and maintain such minimum

standards of quality and maturity and such grading and inspection requirements as will be in the public interest. The regulation of cherry shipments by maturity, grade, size, or quality, or any combination thereof, as authorized in the order, provides a means of carrying out such policy.

In order to facilitate the operation of the program, the committee should each year, and prior to recommending regulation of cherry shipments, prepare and adopt a marketing policy for the ensuing marketing season. A report on such policy should be submitted to the Secretary and made available to growers and handlers of cherries. The policy so established would serve to inform the Secretary and persons in the industry, in advance of the marketing of the crop, of the committee's plans for regulation and the basis therefor. Handlers and growers could then plan their operations in accordance therewith. The policy also would be useful to the committee and the Secretary when specific regulatory actions are being considered, since it would provide basic information necessary to the evaluation of such regulation.

In preparing its marketing policy, the committee should give consideration to the supply and demand factors, hereinafter set forth in the order, affecting marketing conditions for cherries since consideration of such factors is essential to the development of an economically sound and practical marketing policy.

The committee should be permitted to revise its marketing policy so as to give appropriate recognition to the latest known conditions when changes in such conditions are sufficiently marked to warrant modification of such policy. Such action is necessary if the marketing policy is to appropriately reflect the probable regulatory proposals of the committee and be of maximum benefit to all persons concerned. A report of each revised marketing policy should be submitted to the Secretary and made available to growers and handlers, together with the data considered by the committee in making the revision.

The committee should, as the local administrative agency under the order, be authorized to recommend such maturity, grade, size, and quality regulations, as well as any other regulations and amendments thereto authorized by the order, as will tend to effectuate the declared policy of the act. It is the key to successful operation of the order that the committee should have such responsibility. The Secretary should look to the committee, as the agency reflecting the thinking of the industry, for its views and recommendations for promoting more orderly marketing conditions and increased growers' returns for cherries. The committee should, therefore, have authority to recommend such regulations as are authorized by the order whenever such regulations will, in the judgment of the committee, tend to promote more orderly marketing conditions and effectuate the declared policy of the act.

When conditions change so that the then current regulations do not appear

to the committee to be carrying out the declared policy of the act, the committee should have the authority to recommend the amendment, modification, suspension, or termination of such regulations, as the situation warrants.

The order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality, and other appropriate regulations which tend to improve growers' returns and to establish more orderly marketing conditions for cherries. The Secretary should not be precluded from using such information as he may have, and which may or may not be available to the committee for consideration, in issuing such regulations, or amendments or modifications thereof, as may be necessary to effectuate the declared policy of the act. Also, when he determines that any regulation does not tend to effectuate such policy, he should have authority to suspend or terminate the regulation, in accordance with the requirements of the act.

The maturity, grade, size, and quality of cherries which are shipped at any particular time have a direct effect on returns to growers. It is a fact that poorer grades, and less desirable sizes, of cherries marketed return lower prices than do better grades and sizes. A restriction, under the order, of the shipment of cherries of low grade should result in higher returns for the better grades marketed by eliminating the price depressing effect of poor quality cherries.

Handlers often have shipped in fresh fruit channels immature cherries and cherries of poor grade and quality and of undesirable size. Such cherries may be sold only at discounts, and the returns from such sales often do not cover the cash costs of harvesting and marketing. In addition, such sales have tended to depress the prices for the entire crop, for the particular year, below the level which otherwise would have existed if only cherries of suitable maturity, grade, size, and quality, considering the supply and demand conditions for such fruit, had been available in the markets.

The demand for particular grades, sizes, and qualities of cherries varies depending upon the volume of supplies available, the grade, size, and quality composition of such supplies, the availability of competing commodities, and other factors such as the trend and level of consumer income. The supply conditions for cherries are subject to substantial changes during a particular season as the result of weather conditions affecting the volume and quality of the crop.

The grade, size, and quality composition of the cherry crop and the volume of the available supply for the season as a whole and for any particular period during the season are important factors which must be considered in establishing regulations. There is generally a sufficient volume of cherries harvested in the production area so that the shipment of only the better grades, sizes, and qualities of cherries to fresh market could fill market demands. Proper maturity is an important factor determining consumer acceptance. Prices for cherries in the

production area generally start each season at a high level. This is usually followed by a rapid decline. Haste to take advantage of high prices early in the season has frequently caused the shipment of immature, excessively small, and poor quality cherries which has resulted in dissatisfaction of consumers; and such consumer dissatisfaction has been reflected in reduced demand and lowered returns to growers. Therefore, the order should provide for the establishment by the Secretary of regulations by maturity, grade, size, quality, or combinations thereof, based upon limitations recommended by the committee or other available information; and such regulations should cover such period or periods as it is determined are warranted by the anticipated supply and demand conditions. In making its recommendations for such regulations, the committee should consider the heretofore enumerated supply and demand factors. The committee, because of the knowledge and experience of its members, will be well qualified to evaluate such factors and to develop economically sound and practical recommendations for regulations and to advise the Secretary with respect to the supply and demand conditions under which the cherry crop will be marketed.

Several different varieties of cherries are grown in the production area. Among these are Bing, Lambert, Royal Anne, Black Republican, Deacon, and Van. It was estimated that the Bing variety constitutes 60 percent of production and the Lambert 20 percent. Each variety has certain characteristics which serve to distinguish it from other varieties. The differences in characteristics, such as shape, size, color, and maturing characteristics, may make it undesirable to apply the same regulations to all varieties, in that under certain circumstances a given regulation may eliminate an excessive proportion of certain varieties from the market. Also, it was testified that differences in demand exist for certain varieties which may make it desirable to recognize such differences in the establishment of regulations. The order should, therefore, provide authority for the issuance of different regulations for different varieties.

The evidence in the record shows that the most practical basis for issuing regulations covering any portion of the production area, other than the entire production area, would be on a district basis. District 1, the Wenatchee area, and district 2, the Yakima area, are separated by a range of mountains; and the centers—i. e., the cities of Wenatchee and Yakima—of the two areas are about 125 miles apart. Cherries produced in each of the districts are prepared for market in the district where produced. Weather conditions vary between the two areas; and detrimental weather may adversely affect the cherry crop in one district, while the crop in the other district may not be so affected. Weather conditions at blossom time are a very important factor influencing the volume of fruit, size, and rate of maturity. Rain at harvest time can be disastrous. Because of these circumstances, and in order to provide equity among growers and handlers, authority should be provided in the

order to permit establishment of different regulations in different districts of the production area. It was stated in the notice of hearing that authority should be included to regulate differently for any or all portions of the production area. The evidence presented, however, shows that such regulations, if established, would be almost impossible to enforce, since there is intermingling of cherries from all portions of a particular district in the packinghouses in that district. Barring weather disaster, it is expected that the same regulations will be made effective in all districts during any particular period. Since only those persons who have fruit affected by weather damage would have any of such fruit, a regulation could be issued providing increased weather damage tolerance for an entire district even though only portions of such district were affected. Hence, it is concluded that authority to regulate by districts would permit the establishment of such different regulations as are likely to be necessary with respect to cherries produced in different portions of the production area, and such regulations would be more practical from an enforcement standpoint.

It is important that the order provide authority for the committee to recommend and the Secretary to fix the size, weight, capacity, dimensions, or pack of the containers which may be used in the packaging or handling of cherries. Some of the containers used in the shipment of cherries are a 12-pound with inside dimensions $10\frac{1}{2} \times 3\frac{3}{8} \times 15\frac{1}{2}$ inches, a 15-pound with inside dimensions $10\frac{1}{2} \times 3\frac{3}{8} \times 15\frac{1}{2}$ inches, and a 20-pound with inside dimensions $11\frac{1}{2} \times 5 \times 15\frac{1}{8}$ inches. These containers have become almost standard through usage in the industry. However, cherries are marketed at times in containers of slightly smaller dimensions than the "almost standard" container which it closely resembles. For example, a 10-pound container which resembles the 12-pound container is sometimes used; and there is in use an 18-pound container which resembles the 20-pound container. The use of containers, the dimensions of which vary so slightly from each other that customers do not realize the apparent price advantage for a seemingly identical container merely reflects the smaller quantity of fruit, results in disorderly marketing conditions. Standardization of containers to those most suitable for the packing and handling of cherries, and prescribing the use of containers of sizes and capacities which can readily be distinguished from each other, would tend to establish more orderly marketing conditions and increase growers' returns.

The exercise of the authority to regulate containers, however, should not be used to close the door on experimenting with new containers or to prevent the commercial use of any new or superior containers which may be developed.

The order also should contain authority to regulate the packs of containers. This would assist the cherry industry in the production area in its merchandising efforts to provide the most acceptable packs to enhance trade reputation. The United States grades do not make

any requirement with respect to uniformity of size within containers. Most of the cherries for distant shipment are packed row-faced in 15-pound lugs. It is expected that the cherries in the "fill" of the package are of the same sizes as those in the face. Hence, the number of rows imply the size of cherries, but in the absence of any minimum size or pack requirement there is no guarantee of uniformity of size or pack. Loose packs usually consist of cherries of random sizes which, in the absence of requirements as to uniformity of contents, are difficult to describe, cause confusion, and contribute to disorderly marketing conditions. It may be necessary to limit the shipment of cherries to export markets to grades, sizes, packs, or containers which are different from those permitted to be shipped to the domestic market. For example, Canada specifies the containers in which cherries must be packed to be admitted into that country. Moreover, the export market may at times accept cherries of sizes which it is not profitable to ship to domestic markets.

Under certain circumstances it may be desirable to regulate shipments of cherries differently for containers of different capacities on the basis of the particular grades and sizes which may be packed in such containers. Authority for such flexibility in regulations, included in the order, would tend to effectuate the declared policy of the act.

It is not in the public interest to cease regulation when the season average price of cherries exceeds parity. The committee should be authorized to recommend, and the Secretary to establish, such minimum standards of quality and maturity, in terms of grades or sizes, or both; and such grading and inspection requirements, during any and all periods when the season average price for cherries may be above parity, as will effectuate such orderly marketing of cherries and will be in the public interest. Some cherries do not give consumer satisfaction regardless of the price level. Immature cherries, deteriorated cherries, and cherries of very small sizes are examples of the type of fruit that is wasteful and does not represent a value to the consumer and should not be shipped.

The shipment of insufficiently mature cherries or fruit lacking in the quality necessary to assure delivery in satisfactory condition would cause an adverse buyer reaction and would tend to demoralize the market for later shipments of such fruit. Such undesirable fruit has been marketed in the past and undoubtedly would again be marketed in the absence of regulation when the season average price is above parity. Hence, the discontinuance of regulations during season when the average price exceeds parity could adversely affect consumers and also result in dissipation of all benefits from the prior operation of the program.

Adverse growing conditions and weather factors may cause some fruit to develop abnormally, or so affect the quality that it would not be in the public interest to permit its shipment. The possible development depends on the

conditions in the particular season. It is necessary, therefore, that the provisions of the order contain the flexibility needed to reflect such conditions. Hence, the specific minimum standards of quality and maturity that may be made applicable during a particular year should be established by the Secretary upon the basis of the recommendations of the committee, made after review of the existing conditions that year, or other available information.

(f) The order should provide for the exemption from its provisions of such handling of cherries which it is not necessary to regulate in order to effectuate the declared purposes of the act. Insofar as practicable, such exempted handling should be stated explicitly in the order so that handlers will have knowledge of such handling as is not subject to the provisions of the program.

Cherries which are handled for consumption by charitable institutions, for distribution by relief agencies, or for commercial processing into products have little influence on the level of prices for cherries sold in the domestic and export markets. Hence, cherries handled for such purposes should be exempted from compliance with the regulations issued under the order.

In addition, provision should be made to authorize the committee, with the approval of the Secretary, to exempt the handling of cherries, in such specified small quantities, or types of shipments, or shipments made for such specified purposes as it is not necessary to regulate in order to effectuate the declared purposes of the act. Such authorization is necessary to enable the exemption of such handling as may be determined necessary to facilitate the conduct of research, and handling which is found not feasible administratively to regulate and which does not materially affect marketing conditions in commercial channels. It would be impractical to set forth these exemptions in detail in the order, because to do so would destroy the flexibility which is necessary to reflect conditions affecting the handling of cherries in the production area. Therefore, it should be discretionary with the committee, subject to the approval of the Secretary, whether small quantities or types of shipments, or shipments made for specified purposes, should be exempted from regulation, inspection, and assessments and the period during which such exemptions should be in effect.

The allowance of such exemptions may be found to result in avenues of escape from regulation which, if they are found to exist, should be closed. Hence, the committee should be authorized to prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as are necessary to prevent cherries handled for any of the exempted purposes from entering into regulated channels of trade and thereby tend to defeat the objective of the program. For example, should it be found that a portion of the cherries moving to commercial processors was being diverted to fresh fruit markets, it may be necessary for the committee to establish procedures to govern the movement of fruit

for processing even though such cherries do not have to comply with grade, size, quality, and other requirements. These procedures might include such requirements as filing applications for authorization to move cherries in exempted channels and certification by the receiver that such cherries would be used only for the purpose indicated, if it is found that such requirements are necessary to the effective enforcement of the program regulations.

(g) Provision should be made in the order requiring all cherries handled, during any period when handling limitations are effective, to be inspected by the Federal-State Inspection Service and certified as meeting the requirements of the applicable regulation. Inspection and certification of all cherries handled during periods of regulation are essential to the effective supervision of the regulations. Evidence of compliance with regulations issued under the program can be ascertained only through inspection and certification of all cherries handled during the effective period of such regulations. As the handler of cherries is the person responsible for compliance with such regulations, it is reasonable and necessary to require handlers to submit each lot of cherries handled for inspection and certification and to file a copy of the certificate of inspection with the committee. Handlers are familiar with the Federal-State Inspection Service and with the inspection and the certification of fruits in the production area, and the use of such inspection agency under this program is desired by the industry.

Responsibility for obtaining inspection and certification should fall on each person who handles cherries. In this way, not only will the handler who first ships or handles cherries be required to obtain inspection and certification thereof, but also no subsequent handler may handle cherries unless a properly issued inspection certificate, valid pursuant to the terms of the order and applicable regulations thereunder, applies to the shipment. Each handler must bear responsibility for determining that each of his shipments is so inspected and certified.

In instances where any lot of cherries previously inspected and certified is regraded, resorted, repackaged, or in any other way subjected to further preparation for market, such cherries should be required to be inspected following such preparation, and certified as meeting the requirements of the applicable regulations before such cherries are handled, since the identity of the lot is lost in such preparation and the validity of the prior inspection certificate and the information shown thereon destroyed.

(h) The committee should have the authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as may be needed to perform such agency's functions under the order. Handlers have such necessary information in their possession, and the requirement that they furnish such information to the committee in the form of reports would not constitute an undue burden. Moreover, since handlers are the only persons subject to regulation under the program, they are the only

persons who could be required to furnish such information. It is anticipated that most of the information needed by the committee in order to carry out its functions can be obtained from the required inspection certificates. However, it is difficult to anticipate every type of report or kind of information which the committee may find necessary in the conduct of its operations under the order. Therefore, the committee should have the authority to request, with approval of the Secretary, reports and information, as needed, of the type set forth in the order, and at such times and in such manner as may be necessary.

The Secretary should retain the right to approve, change, or rescind any requests by the committee for information in order to protect handlers from unreasonable requests for reports. Any reports and records submitted for committee use by handlers should remain under protective classification and be disclosed to none other than the Secretary and persons authorized by the Secretary. Under certain circumstances, the release of information with respect to cherry shipments may be helpful to the committee and the industry generally in planning for operations under the order during the marketing season. However, none of such reported information may be released other than on a composite basis, and no such release of information should disclose either the identity of handlers or their operations. This is necessary to prevent the disclosure of information which may affect detrimentally the trade or financial position, or the business operations of individual handlers.

Since it is possible that a question could arise with respect to compliance, handlers should be required to maintain for each fiscal period complete records on their receipts, handling, and dispositions of cherries. Such records should be retained for not less than two succeeding years.

(i) Except as provided in the order, no handler should be permitted to handle cherries, the handling of which is prohibited pursuant to the order; and no handler should be permitted to handle cherries except in conformity with the order. If the program is to operate effectively, compliance therewith is essential; and, hence, no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to the handlers who are in compliance and would tend, thereby, to impair the effective operation of the program.

(j) The provisions of §§ 1022.62 through 1022.71, as hereinafter set forth, are similar to those which are included in other marketing agreements and orders now operating. The provisions of §§ 1022.72 through 1022.74, as hereinafter set forth, are also included in other marketing agreements now operating. All such provisions are incidental to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing agreement and order and to effectuate the declared policy of the act. Testimony at the hearing supports the inclusion of each such provision.

Those provisions which are applicable to both the proposed marketing agreement and the proposed order, identified by section number and heading, are as follows: § 1022.62 *Right of the Secretary*; § 1022.63 *Effective time*; § 1022.64 *Termination*; § 1022.65 *Proceedings after termination*; § 1022.66 *Effect of termination or amendment*; § 1022.67 *Duration of immunities*; § 1022.68 *Agents*; § 1022.69 *Derogation*; § 1022.70 *Personal liability*; and § 1022.71 *Separability*.

Those provisions which are applicable to the proposed marketing agreement only, identified by section number and heading are as follows: § 1022.72 *Counterparts*; § 1022.73 *Additional parties*; and § 1022.74 *Order with marketing agreement*.

Rulings on proposed findings and conclusions. January 24, 1957, was set by the Presiding Officer at the hearing as the latest date by which briefs would have to be filed by interested parties with respect to facts presented in evidence at the hearing and the conclusions which should be drawn therefrom. No such brief was filed.

General findings. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of cherries grown in the production area in same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The said marketing agreement and order prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of cherries grown in the production area; and

(5) All handling of cherries grown in the production area as defined in said marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Sweet Cherries Grown in Designated Counties in Washington" and "Order Regulating the Handling of Sweet Cherries Grown in Designated Counties in Washington," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. The aforesaid marketing

agreement and order shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure, governing proceedings to formulate marketing agreements and marketing orders, have been met.

It is hereby ordered, That all of this decision, except the annexed agreement, be published in the *FEDERAL REGISTER*. The regulatory provisions of the said agreement are identical with those contained in the annexed order which will be published with this decision.

Dated: April 11, 1957.

[SEAL]

EARL L. BUTZ,
Assistant Secretary.

Order¹ Regulating the Handling of Sweet Cherries Grown in Designated Counties in Washington

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¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders have been met.

MISCELLANEOUS PROVISIONS

Sec.	
1022.61	Compliance.
1022.62	Right of Secretary.
1022.63	Effective time.
1022.64	Termination.
1022.65	Proceedings after termination.
1022.66	Effect of termination or amendment.
1022.67	Duration of immunities.
1022.68	Agents.
1022.69	Derogation.
1022.70	Personal liability.
1022.71	Separability.

AUTHORITY: §§ 1022.0 to 1022.71 issued under 48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047.

§ 1022.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and the applicable rules of practice and procedure, as amended, effective thereunder (7 CFR Part 900), a public hearing was held at Yakima, Washington, January 14–16, 1957, upon a proposed marketing agreement and a proposed marketing order regulating the handling of sweet cherries (hereinafter referred to as “cherries”) grown in designated counties in Washington. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) This part, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) This part regulates the handling of cherries grown in the production area in same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, a proposed marketing agreement upon which a hearing has been held;

(3) This part is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) This part prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cherries grown in the production area; and

(5) All handling of cherries grown in the production area as defined in the order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date of this part, the handling of cherries grown in the said production area shall be in conformity to, and in compliance with, the terms and conditions of this part; and such terms and conditions are as follows:

DEFINITIONS

§ 1022.1 *Secretary.* “Secretary” means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated,

or to whom authority may hereafter be delegated, to act in his stead.

§ 1022.2 *Act.* “Act” means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

§ 1022.3 *Person.* “Person” means an individual, partnership, corporation, association, or any other business unit.

§ 1022.4 *Production area.* “Production area” means all of the territory included within the Counties of Okanogan, Chelan, Douglas, Grant, Yakima, and Benton within the State of Washington.

§ 1022.5 *Cherries.* “Cherries” means all varieties of sweet cherries grown in the production area, classified botanically as *Prunus avium*.

§ 1022.6 *Varieties.* “Varieties” means and includes all classifications or subdivisions of *Prunus avium*.

§ 1022.7 *Fiscal period.* “Fiscal period” is synonymous with fiscal year and means the 12-month period ending on March 31 of each year or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

§ 1022.8 *Committee.* “Committee” means the Washington Cherry Marketing Committee established pursuant to § 1022.20.

§ 1022.9 *Grade.* “Grade” means any one of the officially established grades of cherries as defined and set forth in:

(a) United States Standards for Sweet Cherries (§§ 51.2646 to 51.2657 of this title; 21 F. R. 2371) or amendments thereto, or modifications thereof, or variations based thereon;

(b) Standards for sweet cherries issued by the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

§ 1022.10 *Size.* “Size” means the greatest diameter, measured through the center of the cherry, at right angles to a line running from the stem to the blossom end, or such other specification as may be established by the committee with the approval of the Secretary.

§ 1022.11 *Grower.* “Grower” is synonymous with producer and means any person who produces cherries for market and who has a proprietary interest therein.

§ 1022.12 *Handler.* “Handler” is synonymous with shipper and means any person (except a common or contract carrier transporting cherries owned by another person) who handles cherries.

§ 1022.13 *Handle.* “Handle” and “ship” are synonymous and mean to sell, consign, deliver, or transport cherries or cause the sale, consignment, delivery, or transportation of cherries or in any other way to place cherries, or cause cherries to be placed, in the current of the commerce from any point within the production area to any point outside thereof: *Provided,* That the term

"handle" shall not include the transportation within the production area of cherries from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such cherries to such packing facility for such preparation.

§ 1022.14 *District*. "District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 1022.31 (m):

(a) "District 1" shall include the Counties of Chelan, Okanogan, Douglas, and Grant.

(b) "District 2" shall include the Counties of Yakima and Benton.

§ 1022.15 *Export*. "Export" means to ship cherries beyond the continental boundaries of the United States.

§ 1022.16 *Pack*. "Pack" means the specific arrangement, size, weight, count, or grade of a quantity of cherries in a particular type and size of container, or any combination thereof.

§ 1022.17 *Container*. "Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of cherries.

ADMINISTRATIVE BODY

§ 1022.20 *Establishment and membership*. There is hereby established a Washington Cherry Marketing Committee consisting of fifteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Ten of the members and their respective alternates shall be growers or officers or employees of corporate growers. Five of the members and their respective alternates shall be handlers, or officers or employees of handlers. The ten members of the committee who are growers or employees or officers of corporate growers are hereinafter referred to as "grower members" of the committee; and the five members of the committee who shall be handlers, or officers or employees of handlers, are hereinafter referred to as "handler members" of the committee. Four of the grower members and their respective alternates shall be producers of cherries in District 1, and six of the grower members and their respective alternates shall be producers of cherries in District 2. Two of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their respective alternates shall be handlers of cherries in District 2.

§ 1022.21 *Term of office*. The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31: *Provided*, That the term of office of one-half the initial grower members and alternates from each district and one initial handler member from each district shall end March 31, 1958. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until

their respective successors are selected and have qualified.

§ 1022.22 *Nomination*—(a) *Initial members*. Nominations for each of the ten initial grower members and five initial handler members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified, in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 1022.20.

(b) *Successor members*. (1) The committee shall hold or cause to be held, not later than March 1 of each year, a meeting or meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee. At each such meeting a chairman and a secretary shall be selected by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of corporate growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces cherries. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of cherries, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles cherries. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of cherries, such person may vote either as a grower or as a handler but not as both.

§ 1022.23 *Selection*. From the nominations made pursuant to § 1022.22, or

from other qualified persons, the Secretary shall select the ten grower members of the committee, the five handler members of the committee, and an alternate for each such member.

§ 1022.24 *Failure to nominate*. If nominations are not made within the time and in the manner prescribed in § 1022.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 1022.20.

§ 1022.25 *Acceptance*. Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 1022.26 *Vacancies*. To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 1022.22 and 1022.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 1022.20.

§ 1022.27 *Alternate members*. An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 1022.30 *Powers*. The committee shall have the following powers:

- (a) To administer the provisions of this part in accordance with its terms;
- (b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;
- (c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and
- (d) To recommend to the Secretary amendments to this part.

§ 1022.31 *Duties*. The committee shall have, among others, the following duties:

- (a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;
- (b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the

compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such time as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part;

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in cherry production within the districts and the production area.

§ 1022.32 Procedure. (a) Twelve members of the committee, including alternates acting for members, shall constitute a quorum; and any action of the committee shall require the concurring vote of at least nine members.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided*, That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 1022.33 Expenses and compensation. The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also

receive compensation, as determined by the committee, which shall not exceed \$10 per day or portion thereof spent in performing such duties: *Provided*, That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 1022.34 Annual report. The committee shall, prior to the last day of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) an appraisal of the effect of such regulatory operations upon the cherry industry; and (c) any recommendations for changes in the program.

EXPENSES AND ASSESSMENTS

§ 1022.40 Expenses. The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 1022.41.

§ 1022.41 Assessments. (a) Each person who first handles cherries shall, with respect to the cherries so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of cherries handled by him as the first handler thereof during the applicable fiscal period and the total quantity of cherries so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

§ 1022.42 Accounting. (a) If, at the end of a fiscal period, the assessments collected are in excess of expenses in-

curred, such excess shall be accounted for as follows:

(1) Except as provided in subparagraph (2) of this paragraph, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve may be established at an amount not to exceed approximately one fiscal period's operational expenses; and such reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal period when there is a crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations, during any fiscal period, prior to the time that assessment income is sufficient to cover such expenses; but any of the reserve funds so used shall be returned to the reserve as soon as assessment income is available for this purpose. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH

§ 1022.45 Marketing research and development. The committee, with the approval of the Secretary, may establish or

provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of cherries. The expense of such projects shall be paid from funds collected pursuant to § 1022.41.

REGULATIONS

§ 1022.50 *Marketing policy.* (a) Each season prior to making any recommendations pursuant to § 1022.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

- (1) The estimated total production of cherries within the production area;
- (2) The expected general quality and size of cherries in the production area and in other areas;
- (3) The expected demand conditions for cherries in different market outlets;
- (4) The expected shipments of cherries produced in the production area and in areas outside the production area;
- (5) Supplies of competing commodities;
- (6) Trend and level of consumer income;
- (7) Other factors having a bearing on the marketing of cherries; and
- (8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for cherries, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report, including each revised marketing policy report, and copies thereof shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 1022.51 *Recommendations for regulation.* (a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of cherries in the manner provided in § 1022.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for cherries during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 1022.52 *Issuance of regulations.* (a) The Secretary shall regulate, in the manner specified in this section, the handling of cherries whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the

declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of cherries grown in any district or districts of the production area;

(2) Limit the shipment of cherries by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of cherries.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

§ 1022.53 *Modification, suspension, or termination of regulations.* (a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 1022.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 1022.54 *Special purpose shipments.*

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 1022.41, 1022.52, 1022.53, and 1022.55, and the regulations issued thereunder, handle cherries (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 1022.41, § 1022.52, § 1022.53, or § 1022.55, the handling of cherries in such minimum quantities, or types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 1022.45), as the committee, with approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent cherries

handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cherries pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the cherries will not be used for any purpose not authorized by this section.

§ 1022.55 *Inspection and certification.* Whenever the handling of any variety of cherries is regulated pursuant to § 1022.52 or § 1022.53, each handler who handles cherries shall, prior thereto, cause such cherries to be inspected by the Federal-State Inspection Service, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such cherries.

REPORTS

§ 1022.60 *Reports.* (a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Such reports may include, but are not necessarily limited to, the following: (1) The quantities of each variety of cherries received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such cherries; and (4) the destination of each shipment of such cherries.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the cherries received, and of cherries disposed of, by such handler as may be necessary to verify reports pursuant to this section.

MISCELLANEOUS PROVISIONS

§ 1022.61 *Compliance.* Except as provided in this part, no person shall handle cherries, the shipment of which has been prohibited by the Secretary in accord-

ance with the provisions of this part; and no person shall handle cherries except in conformity with the provisions of this part.

§ 1022.62 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 1022.63 *Effective time.* The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 1022.64.

§ 1022.64 *Termination.* (a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that continuance is not favored by the majority of producers who, during a representative period, determined by the Secretary, were engaged in the production area in the production of cherries for market: *Provided*, That such majority has produced for market during such period more than 50 percent of the volume of cherries produced for market in the production area; but such termination shall be effective only if announced on or before March 31 of the then current fiscal period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 1022.65 *Proceedings after termination.* (a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged

by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 1022.66 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) effect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 1022.67 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 1022.68 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 1022.69 *Derogation.* Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 1022.70 *Personal liability.* No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other act, either of commis-

sion, or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 1022.71 *Separability.* If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Order Directing That Referendum Be Conducted; Designation of Agents to Conduct Referendum; and Determination of Representative Period

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), it is hereby directed that a referendum be conducted among the producers who, during the period April 1, 1955, through March 31, 1956 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the counties of Okanogan, Chelan, Douglas, Grant, Yakima, and Benton in the State of Washington, in the production of sweet cherries for market to ascertain whether such producers favor the issuance of an order regulating the handling of sweet cherries grown in the aforesaid production area, which order is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith. R. H. Eaton and Allan Henry, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to this referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except Those Applicable to Milk and its Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F. R. 5176; 19 F. R. 35).

Copies of the aforesaid annexed order, of the aforesaid referendum procedure, and of this order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D. C.

Ballots to be cast in the referendum, and other necessary forms and instructions, may be obtained from any referendum agent or appointee.

Dated: April 11, 1957.

[SEAL]

EARL L. BUTZ,
Assistant Secretary.

[F. R. Doc. 57-3036; Filed, Apr. 15, 1957; 8:51 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Bureau of Customs

[342.5]

SHELL ALEXIA OIL A AND SIMILAR OILS

NOTICE OF PROSPECTIVE TARIFF
CLASSIFICATION

APRIL 10, 1957.

It appears probable that a correct interpretation of the import tax laws requires that Shell Alexia Oil A and similar oils be subject to the import tax of 2 cents per gallon under the provision for lubricating oils in section 4521, Internal Revenue Code of 1954, as modified. Such oils have not heretofore been classified as a lubricating oil under an established and uniform practice.

Pursuant to § 16.10a (d) of the Customs Regulations, notice is hereby given that the existing uniform practice of not classifying such oils under section 4521 is under review in the Bureau of Customs.

Consideration will be given to any relevant data, views, or arguments pertaining to the correct import tax status of such oils which are submitted in writing to the Bureau of Customs, Washington 25, D. C. To assure consideration, such communications must be received in the Bureau not later than 30 days from the date of publication of this notice. No hearings will be held.

[SEAL]

RALPH KELLY,
Commissioner of Customs.[F. R. Doc. 57-3031; Filed, Apr. 15, 1957;
8:50 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification 499]

CALIFORNIA

SMALL TRACT CLASSIFICATION

1. Pursuant to authority delegated to me by the California State Supervisor, Bureau of Land Management, under Part 11, Document 4, California State Office, dated November 19, 1954 (19 F. R. 7697), I hereby open the following described lands, which were classified by Order No. 499, dated March 6, 1957 (22 F. R. 1682) to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; U. S. C. 682a), as amended:

SAN BERNARDINO BASE AND MERIDIAN

T. 5 N., R. 2 W.,

Sec. 17, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;Sec. 18, E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$
SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$
SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$
SE $\frac{1}{4}$.

Containing 55 acres, subdivided into 14 tracts, all of which are covered by applications from persons entitled to preference under 43 CFR 257.5 (a).

2. Classification of the above-described lands by this order segregates them from

No. 73—11

all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands are situated about 3 $\frac{1}{2}$ miles northeast of the community of Apple Valley, California and 10 miles southeast of Victorville, California, on the eastern edge of Apple Valley. Access to the lands may be had via a dirt road which leads northeasterly from State Highway 18 at a point nearly 1 $\frac{1}{2}$ miles east of Apple Valley.

The topography of the lands varies from fairly level, gently grading slopes to rough, rugged terrain of the ridges of Granite Mountains, which bound the eastern edge of the valley. The elevation ranges from 3,000 to 3,500 feet above sea level. The soil is primarily gravelly sand in texture, with rocky phases in the

rough, mountainous areas. The vegetative cover consists of creosote bush, white bur sage, annual grasses, and scattered growths of Joshua Tree.

Electric power lines are being constructed to serve lands in the nearby areas. Culinary water is not available from any presently developed source. Stores, schools, and other public facilities are available in Victorville and Apple Valley.

4. The individual tracts vary in size from 2 $\frac{1}{2}$ to 5 acres and are all rectangular in shape. The appraised value of the tracts is listed below. The tracts will be subject to all existing rights-of-way and to rights-of-way for road purposes and public utilities as described below. All minerals in the lands will be reserved to the United States.

Item No.	Description	Acreage	Location of right-of-way	Appraised value/tract
<i>Section 17</i>				
1	S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$	5	33 feet along west boundary	\$300
2	N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$	5	33 feet along west boundary	300
3	S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$	5	33 feet along west boundary	300
4	N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$	5	33 feet along west boundary	300
5	S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$	5	33 feet along west boundary	300
6	NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$	2 $\frac{1}{2}$	33 feet along east boundary	300
7	N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$	5	33 feet along east and north boundaries	300
<i>Section 18</i>				
8	E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	2 $\frac{1}{2}$	33 feet along north boundary	320
9	E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	2 $\frac{1}{2}$	33 feet along north boundary	320
10	E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	2 $\frac{1}{2}$	33 feet along south boundary	240
11	W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	2 $\frac{1}{2}$	33 feet along north boundary	240
12	E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	2 $\frac{1}{2}$	33 feet along north boundary	240
13	N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	5	33 feet along north boundary	600
14	E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	5	33 feet along north boundary	300

5. Persons who have previously acquired a tract under the Small Tract Act are not qualified to purchase a tract at the sale unless they can make a showing satisfactory to the Bureau of Land Management that the acquisition of another tract is warranted in the circumstances.

6. The tracts will be disposed by direct sale at the appraised values indicated in paragraph 4, above, to statutory preference claimants. All valid applications filed by such claimants prior to November 21, 1956, will be granted the preference rights provided for by 43 CFR 257.5 (a).

7. All inquiries concerning these lands should be addressed to Manager, Land Office, 5th Floor Bartlett Building, 215 West Seventh Street, Los Angeles 14, California.

R. G. SPORLEDER,
Officer-in-Charge,
Southern Field Group,
Los Angeles, California.[F. R. Doc. 57-3032; Filed, Apr. 15, 1957;
8:50 a. m.]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

CONTRACTING OFFICERS

DELEGATION OF AUTHORITY

Pursuant to authority vested in the Executive Vice President, Commodity Credit Corporation, by the bylaws of the Corporation, the respective chairmen, or

in their absence the acting chairmen, of the Agricultural Stabilization and Conservation County Committees in the cotton-producing States, or if so designated by such Agricultural Stabilization and Conservation County Committees, the ASC county office managers are hereby appointed contracting officers of Commodity Credit Corporation, with authority to execute, in the name of the Corporation, contracts, agreements, or other documents relating to the purchase, transportation, handling, and storage of cottonseed prior to the delivery of such cottonseed to an oil miller or an approved storage facility under the 1957-Crop Cottonseed Purchase Program formulated by Commodity Credit Corporation and Commodity Stabilization Service.

The foregoing authority as contracting officers shall be exercised in accordance with instructions issued by the appropriate Vice President of Commodity Credit Corporation, which shall be available for public inspection in the files of the Agricultural Stabilization and Conservation county offices in the respective cotton-producing States.

Issued this 10th day of April 1957.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President,
Commodity Credit Corporation.[F. R. Doc. 57-3028; Filed, Apr. 15, 1957;
8:49 a. m.]

DEPARTMENT OF COMMERCE

Maritime Administration

GREAT LAKES/CARIBBEAN

NOTICE OF TENTATIVE CONCLUSIONS AND DETERMINATIONS REGARDING ESSENTIALITY AND UNITED STATES FLAG SERVICE REQUIREMENTS OF TRADE ROUTE NO. 33

Notice is hereby given that on April 8, 1957, the Maritime Administrator, acting pursuant to section 211 of the Merchant Marine Act, 1936, as amended, found and determined the essentiality and United States flag service requirements of United States foreign Trade Route No. 33 and, in accordance with his action of July 27, 1956, ordered that the following tentative conclusions and determinations reached by the Maritime Administrator with respect to said route be published in the FEDERAL REGISTER.

1. Trade Route No. 33, as described below, is determined to be an essential foreign trade route of the United States: Between United States ports on the Great Lakes and St. Lawrence River and foreign ports in the Gulf of Mexico, Caribbean Sea and the Guianas (Mexico to southern border of French Guiana, all islands of the Caribbean and West Indies and other nearby islands including Barbados, Trinidad and Tobago).

2. Requirements for United States flag operation on Trade Route No. 33 prior to the opening of the deep-draft St. Lawrence Seaway are approximately fortnightly sailings during the open season on the Great Lakes between United States ports on the Great Lakes and St. Lawrence River and ports on the North Coast of South America including the Netherlands West Indies. Subject to further review prior to the opening of the Seaway to deep-draft ships, United States flag operations following the opening of the Seaway will require approximately weekly sailings to the North Coast of South America including the Netherlands West Indies, and approximately fortnightly sailings to Cuba and other islands in the Greater Antilles.

3. The type of ship found suitable for operation on Trade Route No. 33 for the interim period (1957-1958) is the N3-S-A2, or similar type freighter and for the deep-draft Seaway in 1959 and subsequent years, suitable C-type freighters supplemented by such new construction as is approved by the Maritime Administration. During the interim period approximately four N3-S-A2, or similar type freighters will provide minimum sailing requirements on Trade Route No. 33. In 1959 and subsequent years six C-type freighters will be required to provide weekly sailings to the North Coast of South America and Netherlands West Indies and three C-type freighters will be required to provide fortnightly sailings to Cuba and other islands in the Greater Antilles.

4. It is desirable, but perhaps not economically feasible, that service at the rate of one to two sailings per month be inaugurated prior to 1959 between United States Great Lakes ports and ports in Cuba. At this time there does not appear to be sufficient potential traffic between the Great Lakes and East Coast of Cen-

tral America and Mexico to justify a separate service immediately upon completion of the Seaway. However, at that time further study should be made of possible U. S. flag service to this foreign area.

Any person, firm or corporation having any interest in the foregoing who desires to offer comments and views or request a hearing thereon, should submit same in writing to the Chief, Office of Government Aid, Maritime Administration, Department of Commerce, Washington 25, D. C., within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER. A request for hearing should be accompanied by a statement of the reasons for such request and any hearing thereby afforded will be before an Examiner on an informal advisory basis only. The Maritime Administrator will consider these comments and views and take such action with respect thereto as in his discretion he deems warranted.

Dated: April 11, 1957.

By order of the Maritime Administrator.

JAMES L. PIMPER,
Secretary.

[F. R. Doc. 57-3009; Filed, Apr. 15, 1957;
8:45 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 8625]

UNITED AIR LINES INC.; UNITED CUSTOM COACH SUSPENSION AND INVESTIGATION

NOTICE OF PREHEARING CONFERENCE

In the matter of "DC-7 Custom Coach" fares and provisions proposed by United Air Lines, Inc.

Notice is hereby given that a prehearing conference in the above-entitled investigation is assigned to be held on April 22, 1957, at 10:00 a. m., e. s. t., in Room 5132, Commerce Building, 14th Street and Constitution Avenue NW., Washington, D. C., before Examiner Ferdinand D. Moran.

Dated at Washington, D. C., April 10, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-3038; Filed, Apr. 15, 1957;
8:51 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6740]

EL PASO ELECTRIC CO.

NOTICE OF APPLICATION

APRIL 9, 1957.

Take notice that on April 3, 1957, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by El Paso Electric Company ("Applicant"), a corporation organized under the laws of the State of Texas and doing business in the States of Texas and New Mexico with its principal business office at El Paso, Texas, seeking an order authorizing the issuance of 119,522 shares of Common Stock, par value of \$5 each, \$6,500,000

principal amount of First Mortgage Bonds, -- percent Series due 1987 and 20,000 shares of Dividend Preferred Stock without par value. The Dividend Preferred Stock and the proposed bonds are to be sold under competitive bidding. Applicant requests exemption from the competitive bidding requirements of the Commission's regulations with respect to the issuance of the 119,522 shares of its Common Stock. Applicant proposes to offer for subscription to its Common Stockholders the shares of Common Stock proposed to be issued at a subscription price per share of not less than 90 percent of the bid price of the Common Stock in the over-the-counter market at the close of business on the next day preceding the fixing of the subscription price by its Board of Directors pursuant to pre-emptive rights on the basis of one share for each fifteen shares held of record with an oversubscription privilege subject to allotment. Rights to subscribe will be evidenced by transferable subscription warrants for which Applicant requests approval. The proposed bonds will be dated as of May 1, 1957 to mature May 1, 1987. Applicant states the securities are to be issued for the purpose of obtaining funds to pay its bank loans, to reimburse its treasury for construction expenditures heretofore made, and to finance additional construction.

Any person desiring to be heard or make any protest with reference to said application should on or before the 29th day of April 1957, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file and available for public inspection.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-3012; Filed, Apr. 15, 1957;
8:45 a. m.]

[Docket No. E-6741]

IOWA POWER AND LIGHT CO.

NOTICE OF APPLICATION

APRIL 9, 1957.

Take notice that on April 4, 1957, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Iowa Power and Light Company ("Applicant"), a corporation organized under the laws of the State of Iowa and doing business in said State, with its principal business office at Des Moines, Iowa, seeking an order authorizing the issuance of not to exceed \$10,000,000 principal amount of its unsecured notes outstanding at any one time of not more than 90 days' maturity to be issued to commercial banking institutions to evidence loans obtained by Applicant under established lines of credit and to bear interest at prime rates in force from time to time (currently 4 percent per annum). Applicant states that the purpose for which said notes are to be issued is to obtain temporary financing of its con-

struction program pending receipt of proceeds from permanent financing.

Any person desiring to be heard or make any protest with reference to said application should on or before the 26th of April 1957 file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file and available for public inspection.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-3013; Filed, Apr. 15, 1957;
8:46 a. m.]

[Docket No. E-6669]

INTERSTATE POWER COMPANY, INC.

NOTICE OF APPLICATION

APRIL 9, 1957.

Take notice that Interstate Power Company, Inc. (Applicant), incorporated under the laws of the State of Delaware and qualified to do business as a foreign corporation in the States of Illinois, Iowa, Minnesota and South Dakota, having its principal place of business at Dubuque, Iowa, filed a supplemental application on April 2, 1957, for authorization pursuant to section 204 of the Federal Power Act to extend for a period not exceeding 90 days from May 31, 1957, four outstanding Promissory Notes aggregating \$4,000,000 in principal amount which were issued by Applicant pursuant to authorization granted by order of the Commission issued April 25, 1956, in the above-entitled matter. A specific condition of that authorization was that the final maturity of all Promissory Notes to be issued pursuant thereto be not later than May 31, 1957. Two of the notes which Applicant seeks to extend are payable to the Chase Manhattan Bank, New York, New York, and the remaining two notes are payable to the Manufacturers Trust Company, New York, New York; each of the notes being in the principal amount of \$1,000,000. Applicant expects to discharge these notes with proceeds to be obtained from the permanent financing for which it currently seeks authorization in Docket No. E-6739. In that docket, Applicant seeks authorization for the issuance of \$20,000,000 principal amount of First Mortgage Bonds and a sufficient number of shares of its Common Stock (par value \$3.50 per share) to raise net proceeds of approximately \$9,000,000.

Any person desiring to be heard or make any protest with reference to said supplemental application should on or before the 29th day of April 1957, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file and available for public inspection.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-3014; Filed, Apr. 15, 1957;
8:46 a. m.]

[Docket Nos. G-11584, 11585]

MECOM PETROLEUMS AND TRANSCONTINENTAL GAS PIPE LINE CORP.

NOTICE OF APPLICATION AND DATE OF HEARING

APRIL 9, 1957.

In the matters of Mecom Petroleum, Docket No. G-11584; Transcontinental Gas Pipe Line Corporation, Docket No. G-11585.

Take notice that on December 11, 1956, John W. Mecom of Houston, Texas, and San Jacinto Petroleum Corporation, a limited partnership doing business as Mecom Petroleum, filed in Docket No. G-11584, an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the sale of natural gas produced by it from certain leases located in Block 45 Field, and Block 56 Field (off shore) Cameron Parish, Louisiana, in interstate commerce for resale to Transcontinental Gas Pipe Line Corporation, subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission and open to public inspection.

On December 11, 1956, Transcontinental Gas Pipe Line Corporation (Transco), a Delaware Corporation, with its principal office at Houston, Texas, filed an application in Docket No. G-11585, for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, authorizing it to construct and operate certain pipeline facilities consisting of approximately 28.5 miles of 16-inch O. D. supply lateral extending from a proposed metering station to be constructed in the Block 45 Field, Cameron Parish, Louisiana, to a point of connection in Calcasieu Parish, Louisiana, with Transco's existing 12-inch Texas Gas Pipe Line Corporation, Louisiana Lateral. The proposed facilities will enable Transco to take delivery of the natural gas to be purchased from Mecom Petroleum, as above mentioned, all as more fully described in the application on file with the Commission and open to public inspection.

The estimated total cost of the proposed facilities is \$2,436,000, which costs Transco proposes to finance by short term bank loans during construction and thereafter to issue bonds for 60 percent of the cost together with the sale of other securities covering the balance of the bank loan referred to. The gas sales contract is dated November 10, 1956.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations, and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Act, and the Commission's rules of practice and procedure, a hearing will be held on May 7, 1957, at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the applications: *Provided*,

however, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 29, 1957. Failure of any party to appear at and participate in the hearing shall be construed as a waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-3015; Filed, Apr. 15, 1957;
8:46 a. m.]

[Docket No. E-6737]

KANSAS CITY POWER & LIGHT CO. AND
INTERSTATE POWER CO.

NOTICE OF APPLICATION

APRIL 9, 1957.

Take notice that on March 27, 1957 and April 2, 1957, respectively, applications were filed pursuant to section 203 of the Federal Power Act by Kansas City Power & Light Company (hereinafter referred to as "Kansas") and Interstate Power Company (hereinafter referred to as "Interstate"), seeking an order authorizing the sale, and the merger or consolidation by purchase of facilities more fully described below. Kansas is a corporation organized under the laws of the State of Missouri and doing business in the States of Missouri, Kansas and Iowa with its principal business office at Kansas City, Missouri. Interstate is a corporation organized under the laws of the State of Delaware and doing business in the States of Illinois, Iowa, Minnesota and South Dakota, with its principal business office at Dubuque, Iowa. Kansas and Interstate seek orders authorizing the sale and disposition of certain facilities owned by Kansas and the purchase, merger or consolidation by Interstate of said facilities with the facilities of Interstate. Kansas proposes to sell and Interstate proposes to buy said facilities for a consideration stated in the application to be \$16,150,515 in cash, subject to certain adjustments. Kansas proposes to sell all of its Iowa properties constituting its Peoples' Gas & Electric Division, an electric, gas and hot water heating utility property. The facilities to be sold by Kansas and purchased by Interstate are presently being used by Kansas in its Iowa service area and, upon purchase, Interstate will continue to use such facilities to render utility service to the public in the areas now being served thereby.

Any person desiring to be heard or make any protest with reference to said applications should on or before the 29th day of April 1957, file with the Federal

Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file and available for public inspection.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-3016; Filed, Apr. 15, 1957;
8:46 a. m.]

[Docket No. E-6739]

INTERSTATE POWER CO.

NOTICE OF APPLICATION

APRIL 9, 1957.

Take notice that on April 2, 1957, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Interstate Power Company (hereinafter referred to as "Interstate"), a corporation organized under the laws of the State of Delaware and doing business in the States of Illinois, Iowa, Minnesota and South Dakota, with its principal business office at Dubuque, Iowa, seeking an order authorizing the issuance of \$20,000,000 principal amount of First Mortgage Bonds, -- Percent Series due 1987 and additional Common Stock, par value of \$3.50 per share. Interstate proposes to issue the \$20,000,000 in aggregate principal amount First Mortgage Bonds by competitive bidding. The bonds will be dated as of May 1, 1957 to mature May 1, 1987. Interstate also proposes to issue a sufficient number of shares of its authorized but unissued Common Stock to raise net proceeds of approximately \$9,000,000. Interstate requests an exemption from the competitive bidding requirements of the Commission's rules with respect to the proposed sale of the additional Common Stock.

The net proceeds to be received by Interstate from the issuance and sale of the Bonds and Additional Common Stock will be used to retire bank loans to pay the purchase price of the Peoples' Gas & Electric Division of Kansas City Power & Light Company as set forth in Interstate's concurrent Application under section 203 of the Federal Power Act, Docket No. E-6737, to redeem the outstanding First Mortgage Bonds of Northwestern Illinois Gas & Electric Company heretofore assumed by Interstate, and to finance in part, Interstate's construction program for the remainder of 1957.

Any person desiring to be heard or make any protest with reference to said application should on or before the 29th day of April 1957, file with the Federal Power Commission, Washington 25, D. C. a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file and available for public inspection.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-3017; Filed, Apr. 15, 1957
8:46 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 1-3827, 1-3679]

GREAT SWEET GRASS OILS LTD., AND
KROY OILS LTD.

ORDER WITHDRAWING REGISTRATION OF SECURITIES ON NATIONAL SECURITIES EXCHANGE

APRIL 8, 1957.

In the matter of Great Sweet Grass Oils Limited, Concourse Building, 100 Adelaide Street West, Toronto, Ontario, Canada, File No. 1-3827; Kroy Oils Limited, Room 10, 328 a-8th Avenue West, Calgary, Alberta, Canada, File No. 1-3679.

Proceedings having been instituted pursuant to section 19 (a) (2) of the Securities Exchange Act of 1934 to determine whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registrations of the capital stock of Great Sweet Grass Oils Limited and of Kroy Oils Limited on the American Stock Exchange, a national securities exchange;

Consolidated hearings having been held after appropriate notice, during the course of which the parties waived a recommended decision by the hearing examiner and proposed findings and briefs, and respondents consented that the Division of Corporation Finance assist in the preparation of the Commission's decision;

Oral argument having been held at which respondents submitted a memorandum brief in support of a suggested form of order; supplemental briefs having been filed by respondents and additional oral argument presented;

The Commission having this day issued its findings and opinion; on the basis of said findings and opinion:

It is ordered, That the registrations of the capital stock of Great Sweet Grass Oils Limited and of Kroy Oils Limited on the American Stock Exchange be, and they hereby are, withdrawn, effective upon the expiration on April 13, 1957, of the Commission's outstanding orders under section 19 (a) (4) of the Securities Exchange Act of 1934 suspending trading in such stocks through that date.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 57-3024; Filed, Apr. 15, 1957;
8:48 a. m.]

[File No. 24D-1562]

EPSOLON URANIUM CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

APRIL 9, 1957.

I. Epsolon Uranium Corporation, a Utah corporation of St. George, Utah, filed with the Commission on January 19, 1955, a notification on Form 1-A and an offering circular, relating to an offer-

ing of 4,277,394 shares of its 1 cent par value common stock at 2½ cents per share for an aggregate of \$106,934.85 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder; and

II. The Commission having reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with, in that:

1. The notification failed to state therein the additional offerings of securities contemplated by the issuer as required by Item 2;

2. The notification failed to contain the information required by Item 3 with respect to unregistered securities of the issuer sold on its behalf within one year prior to the date of filing of the notification;

3. The offering circular failed to state the direct and indirect material interests of the issuer's officers, directors, promoters and affiliates, by security holdings, contracts, options or otherwise in the issuer and in assets proposed to be acquired and operated by the issuer as required by Rule 219 (c) (3); and

4. The offering circular failed to contain a statement of cash receipts and disbursements as required by Rule 219 (c) (6); and

B. The notification and offering circular contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, concerning, among other things:

1. Additional offerings of securities contemplated by the issuer;

2. Securities of the issuer sold within a year of the date the notification was filed;

3. The financial condition of the issuer; and

C. The use of the offering circular, which fails to comply with the Regulation and which contains false and misleading statements of material facts as specified hereinabove and which fails to disclose what action, if any, was taken with respect to an option of the issuer's to purchase on or before March 10, 1955, leases on certain lands described in the offering circular, would operate as a fraud and deceit upon the purchasers.

III. It is ordered, Pursuant to Rule 223 (a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing; that, within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice,

however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place of said hearing will be promptly given by the Commission.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 57-3022; Filed, Apr. 15, 1957;
8:47 a. m.]

[File No. 24SF-1827]

CRENCO CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

APRIL 9, 1957.

I. Crenco Corporation, a Nevada corporation, 206 Virginia Street, Reno, Nevada, filed with the Commission on September 25, 1953, a notification on Form 1-A and offering circular and subsequently filed amendments thereto relating to a proposed offering of 95,000 shares of its common \$1.00 par stock at \$1.00 per share, or \$95,000.00 in the aggregate, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder; and

II. The Commission having reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with, in that Crenco Corporation has failed to file reports on Form 2-A as required by Rule 224; and

B. The use of the offering circular now on file, which fails to disclose, among other things, a material change in the management of the corporation which occurred subsequent to the filing of the said circular, would operate as a fraud and deceit upon the purchasers.

III. It is ordered, Pursuant to Rule 223 (a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any persons having any interest in the matter may file with the Secretary of the Commission a written request for hearing; that, within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place of said hearing will be promptly given by the Commission.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 57-3023; Filed, Apr. 15, 1957;
8:47 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and Part 522 of the regulations issued thereunder (29 CFR Part 522), special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act have been issued to the firms listed below. The employment of learners under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of Part 522. The effective and expiration dates, occupations, wage rates, number or proportion of learners and learning periods for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below; conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Alabama Textile Product Corp., Brantley, Ala.; effective 4-1-57 to 12-31-57 (men's work shirts).

Albert of Arizona, Inc., 234 South Extension Road, Mesa, Ariz.; effective 3-21-57 to 12-31-57 (ladies' slips and petticoats).

Alan Manufacturing Co., 695 Hazle Street, Wilkes-Barre, Pa.; effective 3-25-57 to 12-31-57 (ladies' dresses).

Amory Garment Co., Inc., South Main and Third Streets, Amory, Miss.; effective 4-11-57 to 12-31-57 (men's and boys' trousers).

Annvile Products Co., Inc., King and Church Streets, Annville, Pa.; effective 3-28-57 to 12-31-57 (ladies' slips).

Anthracite Shirt Co., 1 South Franklin Street, Shamokin, Pa.; effective 4-1-57 to 11-30-57 (dresses and sport shirts).

Barlizon of Utah, Inc., 150 West 12th North, Provo, Utah; effective 4-9-57 to 4-8-58. (ladies' lingerie).

Bastian Sportswear, Inc., Bastian, Va.; effective 3-31-57 to 12-31-57 (boys' sportswear).

Bay Slacks, Inc., Bay Minette, Ala.; effective 4-6-57 to 12-31-57 (dress slacks).

Blue Bell, Inc., Tishomingo County, Tishomingo, Miss.; effective 3-30-57 to 12-31-57 (work pants).

Bel Air Manufacturing Co., Bel Air, Md.; effective 4-2-57 to 12-31-57 (learners are authorized to be employed at subminimum rates in the production of raincoats only) (raincoats).

The Boulevard Frocks Co., 510 First Avenue North, Minneapolis, Minn.; effective 3-21-57 to 12-31-57 (ladies' dresses).

Burlington Manufacturing Co., 111 West Third Street, Chanute, Kans.; effective 3-19-57 to 12-31-57 (overalls).

Clinton Garment Co., 1058 South Fourth Street, Clinton, Ind.; effective 3-21-57 to 12-31-57 (rayon and cotton robes and pajamas).

Croyden Manufacturing Corp., 1511-15 West Beverley Street, Staunton, Va.; effective 3-28-57 to 12-31-57 (pajamas and robes).

Doyle Shirt Manufacturing Corp., Doyle, Tenn.; effective 3-28-57 to 12-31-57 (men's sport shirts).

Elder Manufacturing Co., 13th and Lucas Avenue, St. Louis, Mo.; effective 4-4-57 to 12-31-57 (boy's apparel).

Even-Pul Foundations, Inc., 47 West Third Street, Williamsport, Pa.; effective 3-22-57 to 12-31-57 (brassieres and girdles).

The Falmouth Co., Falmouth, Ky.; effective 3-19-57 to 12-31-57 (dungarees and pants).

Fleetwood Shirt Corp., 26 Locust Street, Fleetwood, Pa.; effective 3-28-57 to 12-31-57 (dress and sport shirts).

The Flemingsburg Manufacturing Co., Flemingsburg, Ky.; effective 3-27-57 to 12-31-57 (pants and dungarees).

Franklin Dress Co., 37 East Clinton Street, Newton, N. J.; effective 3-21-57 to 12-31-57 (women's dresses).

Gale-Sobel Co., 1015 Washington Avenue, St. Louis, Mo.; effective 4-4-57 to 11-30-57 (work shirts and work pants).

Glenn Slacks, Inc., Bruce, Miss.; effective 4-1-57 to 9-30-57 (men's play slacks; walking shorts).

Hercules Trouser Co., Hillsboro, Ohio; effective 4-1-57 to 11-30-57 (men's and boys' single pants).

Hercules Trouser Co., Jackson, Ohio; effective 4-10-57 to 11-30-57 (men's and boys' single pants).

Hercules Trouser Co., Manchester, Ohio; effective 4-1-57 to 11-30-57 (men's and boys' single pants).

The Hercules Trouser Co., Wellston, Ohio; 4-1-57 to 12-31-57 (men's and boys' single pants).

Herrin Apparel Co., Inc., 712 East Monroe Street, Herrin, Ill.; effective 3-26-57 to 12-31-57 (women's and misses' dresses).

I. B. S. Manufacturing Co., New Albany, Miss.; effective 4-10-57 to 12-31-57 (sport shirts).

Irwin Manufacturing Co., New Albany, Miss.; effective 4-10-57 to 12-31-57 (sport shirts).

L & S Manufacturing, 479 South Main, Wilkes-Barre, Pa.; effective 3-25-57 to 12-31-57 (ladies' dresses).

J. A. Lamy Manufacturing Co., 108 West Pacific, Sedalia, Mo.; effective 4-10-57 to 12-31-57 (dungarees).

Lincoln Garment Co., 220 North Chicago, Lincoln, Ill.; effective 3-25-57 to 12-31-57 (women's dresses).

The Londontown Manufacturing Co., 5 North Haven Street, Baltimore, Md.; effective 4-12-57 to 12-31-57 (learners are authorized in the manufacture of rainwear only) (men's raincoats and jackets).

Martin Manufacturing Co., 202 Broadway, Martin, Tenn.; effective 3-25-57 to 12-31-57 (men's shirts and jackets for armed services).

Maxon Shirt Corp., 25 East Court Street, Greenville, S. C.; effective 3-25-57 to 12-31-57 (men's and boys' shirts, boys' boxer shorts).

Mode O'Day Corp., Plant No. 3, 59 South First West, Logan, Utah; effective 4-7-57 to 12-31-57 (learners may not be employed at special minimum wage rates in the production of separate skirts) (ladies' dresses).

Morgantown Pants Co., Fredericksburg, Va.; effective 3-27-57 to 12-31-57 (men's trousers).

Mt. Vernon Garment Co., Mt. Vernon, Ga.; effective 3-21-57 to 12-31-57 (men's tropical shorts).

McNeer Dillon Co., Statesville, N. C.; effective 3-28-57 to 12-31-57 (shirts).

Nannette Manufacturing Co., Inc., 314 North 12th Street, Allentown, Pa.; effective 3-20-57 to 12-31-57 (children's dresses).

Nannette Manufacturing Co., Inc., Elkton, Md.; effective 3-20-57 to 12-31-57 (children's dresses).

Nannette Manufacturing Co., Inc., Liberty Street, Glassboro, N. J.; effective 3-20-57 to 12-31-57 (children's dresses).

Nannette Manufacturing Co., Inc., Sixth and Hunter Streets, Gloucester, N. J.; effective 3-20-57 to 12-31-57 (children's dresses).

Nannette Manufacturing Co., Inc., 3800 Frankford Avenue, Philadelphia 24, Pa.; effective 3-20-57 to 12-31-57 (children's dresses).

New England Shirt Co., Inc., 7-9 Montgomery Street, Danbury, Conn.; effective 3-27-57 to 12-31-57 (men's dress and sport shirts).

New Hebron Manufacturing Co., New Hebron, Miss.; effective 3-29-57 to 12-31-57 (learners may not be employed at special minimum wage rates in the production of separate skirts) (women's sportswear).

Newberry Garment Co., Inc., 319 Caldwell Street, Newberry, S. C.; effective 4-4-57 to 12-31-57 (men's and boys' shirts).

Carl Pool Manufacturing Co., 146 Stribling Street, San Antonio, Tex.; effective 3-27-57 to 12-31-57 (trousers, shirts, jackets).

Reidbord Bros. Co., Lumber Street, Buckhannon, W. Va.; effective 3-30-57 to 12-31-57 (men's trousers).

Reliance Manufacturing Co., "Keystone" Factory, Tyrone, Pa.; 3-27-57 to 12-31-57 (sport shirts).

Henry I. Siegel, Inc., Bruceton, Tenn.; effective 3-22-57 to 12-31-57 (men's and boys' sport coats and jackets).

Serbin, Inc., Fayetteville, Tenn.; effective 3-28-57 to 12-31-57 (ladies' sportswear, dresses).

W. Shanhouse & Sons, Inc., South Hazel Street, Hope, Ark.; effective 4-3-57 to 12-31-57 (men's and boys' sport jackets).

Shawnee Manufacturing Co., Inc., 1324 Lindsay Street, Newberry, S. C.; effective 4-4-57 to 12-31-57 (men's and boys' shirts).

M. Snower & Co., Division of Opelika Manufacturing Corp., Teutopolis, Ill.; effective 3-28-57 to 12-31-57 (washable service apparel).

The Solomon Co., Leeds, Ala.; effective 4-1-57 to 12-31-57 (men's and boys' trousers).

Southern Manufacturing Co. No. 1, 333 Fifth Avenue North, Nashville, Tenn.; effective 3-19-57 to 12-31-57 (work shirts).

Swirl, Inc., Easley, S. C.; effective 3-22-57 to 12-31-57 (women's dresses).

Robert Terry Garment Co. Inc., Walkersville, Md.; effective 3-21-57 to 12-31-57 (sport shirts).

Terry's Sportswear, 12 East Main Street Glen Lyon, Pa.; effective 3-25-57 to 12-31-57 (blouses).

Tioga Sportswear Corp., 69 Alden Street, Fall River, Mass.; effective 4-2-57 to 12-31-57 (men's and boys' sport jackets).

The Turner Manufacturing Co., French Street, Goodlettsville, Tenn.; effective 3-30-57 to 12-31-57 (men's cotton uniform twill shirts).

United Pants Co., Inc., 222-28 Beade Street, Plymouth, Pa.; effective 4-1-57 to 12-31-57 (boys' pants, jackets).

United Pants Co., Inc., Shoemaker Street, Swoyerville, Pa.; effective 4-1-57 to 12-31-57 (pants, jackets).

Vernon Manufacturing Co., Inc., Vernon, Tex.; effective 4-10-57 to 12-31-57 (men's and boys' cotton trousers).

Vidalia Garment Co., Ltd., Vidalia, Ga.; effective 4-11-57 to 12-31-57 (men's sport shirts).

Wargosa Manufacturing Co., Inc., Depot Street, Columbia, Tenn.; effective 4-9-57 to 11-30-57 (men's sport shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number or proportion of learners authorized are indicated.

A. G. Baba & Co., 1102 East Fourth Street, Bethlehem, Pa.; effective 3-30-57 to 12-31-57; 10 learners (ladies' cotton blouses).

Audrey's Fashions, Warren Street, Nescopeck, Pa.; effective 3-27-57 to 12-31-57; five learners (children's dresses).

Barad Lingerie Co., Salem, Mo., effective 4-25-57 to 4-24-58; 10 learners (ladies' underwear).

Barneil Manufacturing Co., 135 South Main Street, Doylestown, Pa.; effective 3-28-57 to 12-31-57; five learners (bermuda shorts).

Blue Bell, Inc., Shenandoah, Va.; effective 4-1-57 to 11-30-57; 10 learners (dungarees).

Courtland Novelty Co., Inc., 366 North Courtland Street, East Stroudsburg, Pa.; effective 3-21-57 to 12-31-57; seven learners (tucking on garments).

Debi Blouse, Inc., 1877 Webster Avenue, Bronx, N. Y.; effective 4-1-57 to 9-30-57; five learners (women's blouses).

Devonshire Frocks Co., Inc., River Street, Franklin, N. H.; effective 3-21-57 to 12-31-57; six learners (dresses).

Eloree Garment Corp., Eloree, S. C.; effective 3-21-57 to 12-31-57; 10 learners (ladies' pajamas and gowns).

Federal Corset Co., Inc., Airport Hangar No. 1, Douglas, Ga.; effective 3-27-57 to 12-31-57; 10 learners (women's undergarments).

Jeanette Frocks, Inc., 400 First Avenue North, Minneapolis, Minn.; effective 3-28-57 to 12-31-57; five learners (maternity wear—dresses, shorts, etc.).

Joel Manufacturing Co., 144 Hazle Street, Wilkes-Barre, Pa.; effective 3-25-57 to 12-31-57; five learners (dresses).

Karen Sportswear, Shickshinny, Pa.; effective 4-1-57 to 12-31-57; five learners (women's dresses).

Krestle Manufacturing Co., 519 West Pratt Street, Baltimore, Md.; effective 3-28-57 to 12-31-57; 10 learners (men's pajamas, sport-shirts).

Gasper La Fata & Co., 14 Bush Avenue, Staten Island, N. Y.; effective 4-1-57 to 9-30-57; five learners (boys' pants).

Lillie Mae Dress Co., 1230 Arch Street, Philadelphia 7, Pa.; effective 3-25-57 to 12-31-57; 10 learners (ladies' dresses).

Lowell Dress Manufacturing Co., Inc., 95 Bridge Street, Lowell, Mass.; effective 3-27-57 to 12-31-57; 10 learners (dresses).

M. & G. Sportswear Co., 613 Main Street, Rockland, Maine; effective 3-30-57 to 12-31-57; eight learners (men's and boys' pants).

Main Dress Co., 348 Main Street, Luzerne, Pa.; effective 3-25-57 to 12-31-57; 10 learners (dresses).

Margie J. Manufacturing Co., Division of Boreva Sportswear Co.; Baraboo, Wis.; effective 3-29-57 to 12-31-57; five learners (learners may not be employed at special minimum wage rates in the production of separate skirts) (blouses).

Marshall Clothing Manufacturing Co., 115 East Main Street, Butler, Ind.; effective 3-22-57 to 12-31-57; six learners (sport jackets).

Mode O'Day Corp., 403½ South Street Main Street, Ottawa, Kans.; effective 4-1-57 to 12-31-57; 10 learners (ladies' cotton dresses).

Nightingale Uniform Co., Georgiana, Ala.; effective 3-28-57 to 12-31-57; eight learners (nurses' uniforms).

Pamplin Dress Corp., Pamplin, Va.; effective 3-25-57 to 12-31-57; six learners (children's dresses).

Sport-Kraft Manufacturing Co., Inc., Selbyville, Del.; effective 3-25-57 to 3-24-58; five learners (ladies' blouses).

Tilton Dress Manufacturing Co., Inc., River Street, Franklin, N. H.; effective 3-21-57 to 12-31-57; 10 learners (dresses).

Twin Rivers Manufacturing Co., Inc., River Street, Franklin, N. H.; effective 3-21-57 to 12-31-57; 10 learners (dresses).

Whitehouse Manufacturing Co., Division of Opelika Manufacturing Corp., South Bend, Ind.; effective 3-27-57 to 12-31-57; eight learners (washable service apparel).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Barad Lingerie Co., Salem, Mo.; effective 4-25-57 to 10-24-57; 10 learners (ladies' underwear).

Barbizon of Utah, Inc., 150 West 12th North, Provo, Utah; effective 4-9-57 to 10-8-57; 20 learners (ladies' lingerie).

Byrds Manufacturing Corp., Star City, Ark.; effective 3-27-57 to 9-26-57; 150 learners (boys' sport shirts).

Fleetline Industries, Inc., Garland, N. C.; effective 4-1-57 to 9-30-57; 20 learners (men's sport shirts).

Flushing Shirt Manufacturing Co., Inc., Grantsville, Md.; effective 3-25-57 to 9-24-57; 10 learners (men's uniform shirts).

International Latex Corp., La Fayette, Ala.; effective 4-12-57 to 10-11-57; 100 learners (brassieres).

Londonderry Manufacturing Co., Clarence Street, Hyndman, Pa.; effective 3-28-57 to 9-27-57; 25 learners (ladies' cotton housecoats).

Lordley Inc., Wendell, N. C.; effective 3-27-57 to 9-26-57; 10 learners (sport shirts).

Reidbord Bros. Co., Gulland-Clark Building, Elkins, W. Va.; effective 3-25-57 to 9-24-57; 20 learners (men's work trousers and work shirts).

Spooner Sportswear, 115 Elm Street, Spooner, Wis.; effective 3-28-57 to 9-27-57; 10 learners (ladies' denim ranch pants and jeans).

Sport-Kraft Manufacturing Co., Inc., Selbyville, Del.; effective 3-25-57 to 9-24-57; five learners (ladies' blouses).

Judy Thomas, Inc., 217 Coxe Avenue, Asheville, N. C.; effective 3-25-57 to 9-24-57; six learners (dresses, sportswear).

Waldon Manufacturing Co., Box 915, Walnut, Miss.; effective 4-10-57 to 10-9-57; 40 learners (men's and boys' outerwear).

Wright Manufacturing Co., P. O. Box 509, Toccoa, Ga.; effective 3-25-57 to 9-24-57; 10 learners (cotton semidress pants).

Each learner certificate has been issued upon the employer's representation that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn in the manner provided in Part 528 and as indicated in the certificates. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of Part 522.

Signed at Washington, D. C., this 4th day of April 1957.

MILTON BROOKE,
Authorized Representative
of the Administrator.

[F. R. Doc. 57-3010; Filed, Apr. 15, 1957; 8:45 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 10, 1957.

Protests to the granting of an application must be prepared in accordance

with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 33548: *T. O. F. C.—rates between southwestern points and Louisiana.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on various commodities moving on class rates, loaded in trailers and transported on railroad flat cars between stations in Arkansas, Louisiana, New Mexico, and Texas, also Memphis, Tenn., on one hand, specified points in Louisiana, also Mineral Wells, Tex., on the other.

Grounds for relief: Motor truck competition and circuitous routes.

Tariff: Supplement 2 to Agent Kratzmeir's tariff I. C. C. 4251.

FSA No. 33549: *Rubber tires and related articles from and to western points.* Filed by W. J. Pruetter, Agent, for interested rail carriers. Rates on tires, pneumatic, tire tubes, and related commodities, made of rubber, natural, guayule, neoprene, or synthetic, carloads, from Eau Claire, Wis., Minneapolis, Minnesota Transfer and St. Paul, Minn., Des Moines and Highland Park, Iowa to Kansas City, Mo., Lincoln, Nebr., and Peoria, Ill.

Grounds for relief: Circuitous routes. Tariffs: Supplement 81 to Agent Pruetter's tariff I. C. C. A-4038 and two other tariffs.

FSA No. 33550: *Grain and products from and to points in central territory.* Filed by H. R. Hinsch, Agent, for interested rail carriers. Rates on grain and grain products, carloads, from points in central territory to points in trunk line and New England territories, also to eastern Canadian ports for export; from western gateway points, points in northern Illinois and Wisconsin; and from St. Louis, Mo., East St. Louis and Cairo, Ill., to central territory.

Grounds for relief: Restoration of rate relationships and equalizations on account of Ex Parte 206 increases, market competition and circuitry.

Tariffs: Supplement 69 to Agent Hinsch's tariff I. C. C. 3994 and three other tariffs.

FSA No. 33551: *T. O. F. C. service—rates between official territory and southwestern territory.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on various commodities, moving on class and commodity rates, loaded in trailers and transported on railroad flat cars between specified points in Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, and West Virginia, on the one hand, and specified points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas, on the other.

Grounds for relief: Motor truck competition and circuitous routes.

Tariff: Supplement 5 to Agent Kratzmeir's tariff I. C. C. 4242.

FSA No. 33552: *Lime to Brewster and Pierce, Fla.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on lime, common, hydrated, quick or slack, in bulk, carloads from specified

points in Alabama, Tennessee and Virginia to Brewster and Pierce, Fla.

Grounds for relief: Modified short-line distance formula, grouping and circuitous routes.

Tariff: Supplement 79 to Agent Spaninger's tariff I. C. C. 1345.

FSA No. 33553: *Scrap iron and steel between Cairo, Ill., and Kentucky points.* Filed by Illinois Central Railroad Company, for itself. Rates on scrap iron and steel, carloads between Cairo, Ill., on one hand, and Barlow, Calvert, Gilbertsville, Kevil, La., Center, Maxon and Paducah, Ky., on the other.

Grounds for relief: Maintenance of rates formerly in effect prior to abandonment of a portion of applicant's line under Finance Docket 13992.

Tariff: Supplement 143 to Agent Spaninger's tariff I. C. C. 1329.

FSA No. 33554: *Commodity rates from and to Penn. Ind.* Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on various commodities moving on commodity rates between Penn. Ind., on one hand, and points in the United States and Canada, on the other.

Grounds for relief: New station.

FSA No. 33555: *Crude rubber—Baton Rouge, La., group to interstate points.* Filed by J. H. Marque, Alternate Agent, for interested rail carriers. Rates on crude rubber, artificial, synthetic or neoprene, carloads from Baton Rouge and North Baton Rouge, La., to St. Louis, Mo., East St. Louis, Ill., and specified points beyond in Illinois, central and official territories.

Grounds for relief: Circuitous routes.

Tariffs: Supplement 54 to Alternate Agent Marque's I. C. C. 442. Supplement 227 to Alternate Agent Marque's I. C. C. 417.

FSA No. 33556: *T. O. F. C. service—between trunk line territory and southwestern territory.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on various commodities, moving on class and commodity rates, loaded in trailers and transported on railroad flat cars between specified points in Delaware, District of Columbia, Maryland, New Jersey, New York, and eastern Pennsylvania, on one hand, and points in Arkansas, Louisiana, and Texas, on the other.

Grounds for relief: Motor truck competition and circuitry.

Tariff: Supplement 20 to Agent Kratzmeir's tariff I. C. C. 4213.

FSA No. 33557: *Paper and paper articles—Birmingham, Ala., to Houston, Tex.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on paper and paper articles, carloads from Birmingham, Ala., to Houston, Tex.

Grounds for relief: Barge-truck competition and circuitous routes.

Tariff: Supplement 39 to Agent Kratzmeir's tariff I. C. C. 4198.

By the Commission,

[SEAL]

HAROLD D. MCCOY,

Secretary.

[F. R. Doc. 57-3020; Filed, Apr. 15, 1957; 8:47 a. m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 11, 1957.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 33558: *Plywood—Georgia to official and W. T. L. territories.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on cative plywood, carloads from Savannah and Port Wentworth, Ga., to points in official and western trunk-line territories.

Grounds for relief: Short-line distance formula, grouping and circuitous routes.

Tariff: Supplement 168 to Agent Spaninger's tariff I. C. C. 1101 and two other tariffs.

FSA No. 33559: *Superphosphate—Cottondale, Fla., to Jacksonville, Fla.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on superphosphate (acid phosphate) other than defluorinated, carloads from Cottondale, Fla., to Jacksonville, Fla.

Grounds for relief: Circuitous routes.

Tariff: Supplement 68 to Agent Spaninger's tariff I. C. C. 1510.

FSA No. 33560: *Foodstuffs—Benning, D. C., to southern territory.* Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on canned or preserved foodstuffs, carloads from Benning, D. C., to specified points in southern territory.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariff: Supplement 6 to Agent Hinsch's tariff I. C. C. 4761.

FSA No. 33561: *Slabs—From official territory to southern territory.* Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on concrete building or roofing slabs, carloads from points in official, including Illinois territory, to points in southern territory.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 6 to Agent Hinsch's tariff I. C. C. 4761 and Agent R. G. Raasch's tariff I. C. C. 880.

FSA No. 33562: *Glassware between southern and official territories.* Filed by St. Louis-San Francisco Railway Company, for itself and other interested rail carriers. Rates on glassware, namely, bottles, carboys, fruit jars, jelly glasses, etc., carloads between points in official, including Illinois territory, on the one hand, and points in southern territory, on the other.

Grounds for relief: Circuitous routes in part west of the Mississippi River.

FSA No. 33563: *Rubber tires and parts—Memphis, Tenn., to Massena, N. Y.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on rubber tires and parts thereof, carloads from Memphis, Tenn., to Massena, N. Y.

Grounds for relief: Circuitous routes in part west of the Mississippi River.

FSA No. 33564: *Carbon tetrachloride—Charleston, W. Va., group and Louisville, Ky., to Louisiana.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers.

Rates on carbon, tetrachloride, tank-car loads from Charleston, W. Va., and Group, and Louisville, Ky., to Baton Rouge and North Baton Rouge, La.

Grounds for relief: Circuitous routes in part west of the Mississippi River.

FSA No. 33565: Soda ash—Official territory to Kansas City, Mo., and Leaven-

worth, Kans. Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on soda ash, including modified soda ash, and sesqui-carbonate of soda, carloads from specified points in Michigan, New York, Ohio and Virginia to Kansas City, Mo.-Kans., and Leavenworth, Kans.

Grounds for relief: Circuitous routes in part west of the Missouri River.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-3021; Filed, Apr. 15, 1957; 8:47 a. m.]